STATE OF MICHIGAN

IN THE SUPREME COURT

Appeal From The Michigan Court Of Appeals

IN RE PETITION BY TREASURER OF
WAYNE COUNTY FOR FORECLOSURE

WAYNE COUNTY TREASURER,
Petitioner,

and

MATTHEW TATARIAN and MICHAEL KELLY,
Intervening Parties-Appellants,

v

Docket No. 129341

PERFECTING CHURCH,
Respondent-Appellee.

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BRIEF OF *AMICUS CURIAE* MICHIGAN ASSOCIATION OF COUNTY TREASURERS IN SUPPORT OF INTERVENING PARTIES-APPELLANTS

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STATEMENT OF BASIS OF JURISDICTION

This Court has jurisdiction over this matter pursuant to MCR 7.301(A)(2) in that it involves an appeal from a July 11, 2005 Order of the Court of Appeals denying Appellant's Application for Leave to Appeal a July 7, 2004 Order of the Wayne County Circuit Court Granting Relief from Judgment.

QUESTIONS PRESENTED FOR REVIEW

I. DID THE WAYNE COUNTY CIRCUIT COURT LACK JURISDICTION TO GRANT RELIEF FROM A JUDGMENT OF FORECLOSURE WHERE THE CLEAR LANGUAGE OF MCL 211.78L(1) AND (2) VESTS EXCLUSIVE JURISDICTION OVER SUCH CASES IN THE COURT OF CLAIMS?

The trial court did not answer this question.

The Court of Appeals did not answer this question.

Intervening Parties-Appellants answer "Yes".

Respondent-Appellee would answer "No".

Amicus Curiae Michigan Association of County Treasurers answers "Yes".

This Court should answer "Yes".

II. DOES MCL 211.78L VIOLATE DUE PROCESS WHERE IT ALLOWS POST FORECLOSURE CLAIMS BASED ON LACK OF NOTICE BUT SIMPLY REQUIRES THAT SUCH CLAIMS BE BROUGHT IN THE COURT OF CLAIMS, AND, SO AS TO ALLOW THE DEVELOPMENT OF FORECLOSED PROPERTY AND PROTECT THE RIGHTS OF SUBSEQUENT PURCHASERS, LIMITS DAMAGES IN SUCH CASES TO THE FAIR MARKET VALUE OF THE PROPERTY?

The trial court did not answer this question.

The Court of Appeals did not answer this question.

Intervening Parties-Appellants answer "No".

Respondent-Appellee would answer "Yes".

Amicus Curiae Michigan Association of County Treasurers answers "No".

This Court should answer "No".

STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Michigan Association of County Treasurers ("MACT") is a non-profit incorporated association formed in 1934, which includes as its members every county treasurer from the State of Michigan's 83 counties. (Affidavit of Dianne H. Hardy, attached as Exhibit A, ¶ 3.)

In 1999, when the Michigan Legislature considered legislation to reform Michigan's tax reversion process, MACT was actively involved, working closely with legislators and officials within the administration to provide expertise in the drafting and amendment of the bill that eventually became 1999 Public Act 123 ("PA 123"). Thus, MACT was actively involved in the drafting of the very legislation that this Court is now reviewing. (*Id.*, ¶ 4.)

As a part of this reform, PA 123 gave county treasurers the option to manage the foreclosure process themselves by acting as the foreclosing governmental unit ("FGU") or to opt-out, allowing the State to serve as the FGU on their behalf. MCL 211.78(3). At present, seventy (70) counties act as their own FGU, with the State fulfilling that role in the remaining thirteen (13) counties. Because the majority of the members of MACT serve as FGUs, they are involved with foreclosure and property sales on a regular basis, and are often involved in litigation over same. For this reason as well, MACT has an interest in this matter.

PA 123 required a committee of treasurers appointed by MACT to provide a report to the House and Senate committees involved in the bill's passage discussing the Act's successes and identifying areas for improvement. MCL 211.78p(4)(a). Recommendations offered by MACT were utilized by the Legislature and are reflected in subsequent amendments adopted in 2003. (*See* 2003 Public Act 263.) This illustrates the Legislature's recognition of the importance of MACT's contributions in enacting and implementing the laws governing foreclosure. Similarly, MACT's input will assist this Court in its consideration of this case.

In MACT's opinion, the statutory provision at issue, MCL 211.78l ("Section 78l") which provides that a person who claims that he or she did not receive notice of foreclosure may only bring a claim for monetary damages, and grants the Court of Claims original and exclusive jurisdiction to address such claims, is critically important to the success of the foreclosure and subsequent sale system. (*See* Aff of Dianne H. Hardy, Ex. A, ¶ 5.) Under the former system, title insurance companies generally declined to insure title to tax-reverted properties without a quiet title, and, sometimes, even with such action. By eliminating the possibility of foreclosed property being reacquired by the delinquent former owners or interestholders, Section 78l encourages redevelopment. (*Id.*, ¶¶ 6, 8.) (*See* Ex. A, Aff of Dianne H. Hardy, ¶ 8.)

In light of the statewide perspective of its organization, the aggregate experience of its membership, and the recognized importance of its involvement with PA 123, MACT is particularly qualified to assist the Court in resolving the important issues raised in this case.

STATEMENT OF FACTS AND PROCEEDINGS

A. The Facts of the Case.

The parcel at issue in this case, Tax Parcel ID No. 15005397, located at 17843 Van Dyke Road in Detroit, was utilized by Respondent-Appellee Perfecting Church ("Perfecting Church") as a parking lot for church services, along with an adjoining parcel at 17833 Van Dyke. (*See* Appellee's Brief in Opposition to Appellant's Application for Leave to Appeal, p. 1.) After taxes on Tax Parcel ID No. 15005397 became delinquent, the Wayne County Treasurer (the "Treasurer") initiated the foreclosure process pursuant to the General Property Tax Act's foreclosure provisions, as amended by 1999 PA 123 ("PA 123"). The Treasurer attempted to provide notice of the delinquency to the property owner through certified letters, a personal visit, and posting on the parcel, (*see* Appellee's Brief in Opposition to Appellant's Application for Leave to Appeal, Ex. C & Ex. D), however, these attempts at notice failed to notify Perfecting Church. (*Id.*, p. 2.)

On March 10, 2003, the Wayne County Circuit Court entered a judgment of foreclosure involving several parcels, including Tax Parcel ID No. 15005397. Intervening Parties-Appellants, Matthew Tatarian and Michael Kelly ("Tatarian and Kelly"), purchased the parcel at issue at an auction held by the Treasurer and received a Quit Claim Deed dated November 4, 2003. (*See* Appellant's Application for Leave to Appeal, p. 6.)

After Perfecting Church learned of the delinquency and foreclosure, on May 14, 2004, it filed a motion in the Circuit Court seeking relief from the court's March 10, 2003 Judgment of Foreclosure, on the grounds that it did not receive notice of the tax delinquency or the foreclosure. (*See* Appellee's Brief in Opposition to Appellant's Application for Leave to Appeal, p. 2.) On July 7, 2004, the Circuit Court issued an Order Granting Relief from Judgment. The July 7, 2004 Order required the Treasurer: (1) to allow Perfecting Church 21

days to pay the delinquent taxes; (2) to record a Certificate of Error for the property; and (3) to cancel the deed issued to Tatarian and Kelly. The Order also required Tatarian and Kelly to deliver a quit claim deed to the property to Perfecting Church.

On February 23, 2005, Tatarian and Kelly filed an Application for Delayed Leave to Appeal with the Court of Appeals, which was denied on July 11, 2005. On August 22, 2005, Tatarian and Kelly filed an application for leave to appeal to this Court. This Court granted that application on February 24, 2006, and specifically directed the parties to brief the following issues:

> (1) whether the trial court retained jurisdiction to grant relief from the judgment of foreclosure pursuant to MCR 2.612(C), notwithstanding the provisions of MCL 211.78l(1) and (2); and
>
> (2) whether MCL 211.78l permits a person to be deprived of property without being afforded due process.

MACT provides the following facts regarding the amendments to the General Property Tax Act ("GPTA"), including the provision at issue, as it believes this background will assist the Court.

B. Background Information on the General Property Tax Act.

1. Constitutional and Statutory Authority.

In Michigan, "[a]ll political power is inherent in the people. Government is instituted for their equal benefit, security, and protection." Const 1963, art 1, § 1. The people of the State of Michigan have vested a portion of their political power in elected legislators. "The legislative power of the State of Michigan is vested in a senate and a house of representatives." Const 1963, art 4, § 1. Exercising its power, the Michigan Legislature enacted, and has amended, the General Property Tax Act ("GPTA"), 1893 PA 206, MCL 211.1 – 211.157. The GPTA provides, among

other things, for the assessment of rights and interests in property, the levy and collection of property taxes, and the foreclosure, sale, and conveyance of property for unpaid delinquent taxes.

2. The 1999 Amendments to the GPTA.

In 1999, the Legislature enacted Public Act 123 ("PA 123"), which amended the GPTA, significantly revising the process for the collection of delinquent taxes; forfeiture; foreclosure; and the sale of foreclosed properties. PA 123 was part of a larger package of bills addressing the tax reversion process, as well as encouraging urban homesteading, which encourages development in abandoned areas and in urban core cities.

As a part of this reform, county treasurers, constitutionally created entities (*see* Const 1963, art 7, § 4) were given the option to manage the foreclosure process themselves by acting as the foreclosing governmental unit ("FGU") or to opt-out, allowing the State to serve as the FGU on their behalf. MCL 211.78(3). At present, seventy (70) counties act as their own FGU, with the State fulfilling that role in the remaining thirteen (13) counties.

3. General Purpose and Benefit of the 1999 Amendments.

Prior to the adoption of the 1999 amendments, Michigan officials, including former State Senator and chair of the Senate Economic Development Committee Bill Schuette, hired the Hudson Institute, a policy research organization, to analyze the former tax reversion process. The Hudson Institute developed a proposal called the Michigan Urban Housing Initiative to shorten the foreclosure process and provide clear titles, in order to promote revitalization in Michigan's urban centers. That proposal became the precursor to the legislation at issue. Under the prior system, title insurance companies generally declined to insure title to tax-reverted properties without a quiet title action; other simply refused regardless, which created a significant obstacle to redevelopment. The Hudson Institute described the problems in the former system:

> Enacted in 1893, Michigan's tax reversion system was designed to protect homeowners and farmers who have temporary financial difficulties. Despite this laudable objective, the system fails completely to address the cities' problem of abandoned housing. Under the current system, it takes six years -six Michigan winters - for abandoned property to work its way through the tax reversion system. Meanwhile, responsibility for the house bounces from the city to the county treasurer and then to the state government before eventually being returned to the city.
>
> The consequences are devastating for the cities. Once abandoned, homes deteriorate until they are unfit to live in and blight the neighborhoods where they are located, while the tax reversion process grinds on. To make things worse, the property often comes back to the city with a questionable legal title so it can't be sold or used for public purposes. For example, Detroit reports that it has 46,000 parcels of tax-reverted land without clear title. Many other Michigan cities have the same problem on a smaller scale.

History Lesson Shapes Future Urban Policy, Michigan Urban Housing Initiative Op-Ed, Hudson Institute, July 19, 1999, available on Hudson Institute website, http://www.hudson.org/index.cfm?fuseaction=publication_details&id=345. (attached hereto as Ex. B).

In a Detroit News article prior to passage of PA 123, experts in community development stressed the importance of obtaining clear title to previously foreclosed properties:

> One Detroit neighborhood leader said the biggest value probably lies in uncomplicating the process of gaining title to parcels that would be assembled into larger tracts. "I could picture subdivisions as a phenomenal tool for attracting people back into the city," said John O'Brien, director of Northwest Detroit Neighborhood Development.
>
> * * *
>
> A key element is easing the procedures for clearing the title to a property, said Jeff Reno, a tax reversion expert . . . .

Gary Heinlein, *15 Legislative Proposals Encourage 'Homesteading,'* Detroit News, September 28, 1999, 1C (emphasis added). (attached hereto as Ex. C).

In adopting PA 123, the Legislature clearly stated that its purpose was to strengthen the economy and to encourage efficient and expeditious return to productive use of property returned for delinquent taxes:

> The legislature finds that there exists in this state a continuing need to strengthen and revitalize the economy of this state and its municipalities by encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes. Therefore, the powers granted in this act relating to the return of property tax for delinquent taxes constitute the performance by this state or a political subdivision of this state of essential public purposes and functions.

MCL 211.78(1).[1]

The Senate Fiscal Agency ("SFA") analyzed all of the bills in the package. Regarding the tax reversion process bills, the SFA analysis included the following statements summarizing support for the bills:

> The tax reversion bills . . . will shorten, streamline, and clarify the process to bring tax delinquent property, especially abandoned property, back into productive use. Under the existing process, it can take over five years before the State makes a final disposition of tax delinquent property. During this time, the owner has multitude opportunities to redeem the property, and once title does finally vest in the State, the property often is unmarketable because title insurers will not write policies against it.
>
> * * *
>
> The length and complexity of the current process contribute[s] to urban blight because property is not noticed until taxes are delinquent; then, the property has to move through multitude administrative steps at various levels of government before a local unit can receive the property. By that time most buildings and

[1] Unless otherwise stated, all statutory provisions are quoted as written as of March 10, 2003, the date of the judgment of foreclosure in the Wayne County Circuit Court. Beginning January 5, 2004, several amendments to the foreclosure provisions took effect as the result of 2003 PA 263 ("PA 263"). Notably, however, PA 263 made only minor and unrelated changes to Section 78l, the provision currently under review by this Court, none of which pertain to the portions of the statute that this Court is examining.

> fixtures have deteriorated and become barely salvageable and the title is worth little to the local unit. The bills shorten the tax reversion process while offering more protection to property owners and all persons with an interest in the property, by providing for sufficient notice, title searches, and ample time for redemption.

Senate Fiscal Agency Bill Analysis, SB 343, 344, 346-348, 488, 489, 507, HB 4489 & 4509, September 3, 1999, p. 20. (attached hereto as Ex. D).

The House Legislative Analysis included similar statements:

> The current reversion process allows properties to deteriorate and serves as a barrier to their productive use. The process promotes urban blight as it thwarts urban reinvestment. These bills would reform the tax reversion system to 1) shorten the process; 2) simplify the steps for taxpayers; and 3) provide clear and marketable title to tax reverted property. Clear title will facilitate property improvements and it will encourage new construction and renovation. What's more, these bills strike the necessary balance between property owners' rights and the need for neighborhood revitalization in the heart of our urban centers. The legislation achieves that balance by providing for sufficient notice to all who have an interest in tax delinquent property. Following ample notice, the bills allow a court to reliably quiet title to the property, and then to transfer absolute title to a new owner who can invest in the property with confidence and security. This legislation, together with the legislation that creates the Urban Homesteading Program, can help improve the quality of life in cities throughout Michigan.

House Legislative Analysis, HB 4489 and SB 488, 489 and 507, July 23, 1999, p. 18. (attached hereto as Ex. E).

As emphasized in these statements, PA 123's primary focus was to ensure that tax delinquent property was efficiently returned to productive use. By extinguishing all interests in a parcel after foreclosure and limiting the remedy for claims of lack of notice to monetary damages (as opposed to the return of the property), PA 123 provides clear title to purchasers at tax sales. The promise of clear title provides necessary assurance to

title insurers, as well as potential subsequent purchasers. The involvement of both groups is critical in encouraging redevelopment. An important part of this system is Section 78l, the provision at issue in this case.

4. Section 78l.

Section 78l reads as follows:

> (1) If a judgment for foreclosure is entered under section 78k and all existing recorded and unrecorded interests in a parcel of property are extinguished as provided in section 78k, the owner of any extinguished recorded or unrecorded interest in that property who claims that he or she did not receive any notice required under this act shall not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover monetary damages as provided in this section.
>
> (2) The court of claims has original and exclusive jurisdiction in any action to recover monetary damages under this section.
>
> (3) An action to recover monetary damages under this section shall not be brought more than 2 years after a judgment for foreclosure is entered under section 78k.
>
> (4) Any monetary damages recoverable under this section shall be determined as of the date a judgment for foreclosure is entered under section 78k and shall not exceed the fair market value of the property on that date.

MCL 211.78l.[2]

SUMMARY OF ARGUMENT

Under the unambiguous language of MCL 211.78l, the Circuit Court did not retain jurisdiction to grant relief from its March 10, 2003 Judgment of Foreclosure. Section 78l clearly

[2] As stated above, section 78l is quoted as it existed on the date of foreclosure. PA 263 amended this provision, yet not in ways relevant to this case. Specifically, PA 263 added provisions that taxes, interest, penalties and fees owed on the property can be deducted from any money damages awarded and that the right to sue for money damages is not transferable except by testate or intestate succession. *See* 2003 PA 263.

vests "original and exclusive" jurisdiction in the Court of Claims for cases such as this, where a former owner claims that he or she did not receive notice of delinquency and/or foreclosure. According to longstanding principles of statutory interpretation, this Court is obligated to carry out the Legislature's clearly expressed intent and cannot substitute its own policy preferences for those of the Legislature. To affirm the Circuit Court's decision granting Appellee relief from judgment and repossession of the property would contravene both the clear language of Section 781 and the Legislative intent. As for the interplay between the statute and the Michigan Court Rules, although MCR 2.612(C) generally allows courts to relieve a party from a final judgment on certain grounds, because this rule conflicts with the clear statutory language regarding post-judgment jurisdiction, MCR 2.612(C) must yield to Section 781. And it is perfectly consistent with Michigan law that the Legislature carved out original and exclusive jurisdiction in the Court of Claims for post-foreclosure claims for lack of notice, as these are precisely the types of claims that are routinely required to be brought in that court.

Turning to the second issue before the Court, Section 781's vesting of post-judgment jurisdiction in the Court of Claims and its limitation to monetary damages does not violate due process. Even before PA 123's changes to the foreclosure notice provisions, which required additional forms of notice, this Court recognized the constitutionality of the earlier notice provisions. The statute also specifically states that failure to follow the notice requirement does not create a claim, and property owners will always contend that more could have been done. Statutes are presumed to be constitutional, and nothing raised by Perfecting Church suggests that granting jurisdiction to the Court of Claims to hear post-foreclosure judgment claims violates due process. A requirement that a claim be pursued in a specific court, such as the Court of Claims, rather than the court chosen by the claimant, does not rise to the level of a due process

violation. Nor does Section 78l's limitation to monetary damages violate due process because owners are not left without any remedy. After all redemption opportunities expire and a judgment of foreclosure is issued, a prior owner may seek to recover the fair market value of his or her property, less any taxes or fees owed. Finally, it is important to keep in mind the rights of those persons who purchase property after judgments of foreclosure. The Legislature vests certain property rights in these third parties that should not be ignored.

ARGUMENT

I. STANDARD OF REVIEW

Whether a court has subject matter jurisdiction is a question of law that is reviewed *de novo*. *See, e.g., Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001). Similarly, questions of statutory construction are reviewed *de novo*. *See, e.g., Parkwood Ltd Dividend Housing Ass'n v State Housing Dev Auth*, 468 Mich 763, 767; 664 NW2d 185 (2003). Questions involving the constitutionality of a statutory provision are also reviewed *de novo*. *See, e.g., DeRose v DeRose*, 469 Mich 320, 326; 666 NW2d 636 (2003).

II. UNDER THE UNAMBIGUOUS LANGUAGE OF THE FORECLOSURE STATUTE, MCL 211.78L(1) AND (2), THE CIRCUIT COURT DID NOT RETAIN JURISDICTION TO GRANT RELIEF FROM JUDGMENT.

A. The Statutory Language is Unambiguous.

Section 78l specifically vests "original and exclusive" jurisdiction in the Court of Claims in cases such as this, where a former property owner claims that he or she did not receive notice of delinquency and/or foreclosure. Section 78l states that where:

> [a] judgment for foreclosure is entered . . . the owner of any extinguished . . . interest in that property who claims that he or she did not receive any notice required under this act shall not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover monetary damages as provided in this section [and] the court of claims has original

> and exclusive jurisdiction in any action to recover monetary damages under this section.

MCL 211.781(1) and (2) (emphasis added).

In this case, the Wayne County Circuit Court entered a judgment of foreclosure on March 10, 2003. The party whose interest was extinguished, Perfecting Church, filed a motion for relief from judgment, claiming it did not receive notice of the foreclosure. Although prohibited by Section 781(1), Perfecting Church (1) sought possession of the property that had been foreclosed, and (2) did so in the Circuit Court. Both of these actions contravene the explicit language of Section 781, which allows parties in Perfecting Church's position to sue only (1) for monetary damages, and then (2) only in the Court of Claims.

In interpreting a statute, courts are obligated to carry out the Legislature's intent as expressed in the statutory language. If a statute's language is clear and lacks ambiguity, that language must be enforced as written. *See, e.g., People v Schaefer*, 473 Mich 418, 430; 703 NW2d 774 (2005) (citing *Halloran v Bhan*, 470 Mich 572, 576; 683 NW2d 129 (2004); *DiBenedetto v West Shore Hospital*, 461 Mich 394, 402; 605 NW2d 300 (2000)). If there is no ambiguity, judicial construction is neither necessary nor allowed – the presumption is that the Legislature intended the clear meaning expressed. *See Schaefer*, *supra* at 430-431 (citing *People v Laney*, 470 Mich 267, 271; 680 NW2d 888 (2004); *People v Phillips*, 469 Mich 390, 395; 666 NW2d 657 (2003)). Stated another way, a court cannot read into an unambiguous statute language not placed there by the Legislature. *See, e.g., People v Guerra*, 469 Mich 966; 671 NW2d 535 (2003); *People v Gonzalez*, 469 Mich 967; 671 NW2d 536 (2003). And as this Court has repeatedly acknowledged, courts are not empowered to substitute their own policy preferences for those enacted by the Legislature. *See Mayor of Lansing v Michigan Public Service Comm'n*, 470 Mich 154, 164; 680 NW2d 840 (2004); *Robertson v DaimlerChrysler*

Corp, 465 Mich 732, 758; 641 NW2d 567 (2002) (citations omitted) (upholding a statutory provision, despite the Court's view that the law is "illogical"); *DiBenedetto*, 461 Mich at 405 (although the dissent opined that the statute creates an illogical result, the Court "decline[s] to rewrite plain statutory language and substitute our policy decisions for those already made by the Legislature"). In *Devillers v Auto Club Ins Assoc*, 473 Mich 562, 591; 702 NW2d 539 (2005), this Court stressed the importance of enforcing statutes as written, particularly in light of separation of powers principles:

> Indeed, if a court is free to cast aside, under the guise of equity, a plain statute . . . simply because the court views the statute as 'unfair,' then our system of government ceases to function as a representative democracy. No longer will policy debates occur, and policy choices be made, in the Legislature. Instead, an aggrieved party need only convince a willing judge to rewrite the statute under the name of equity. While such an approach might be extraordinarily efficient for a particular litigant, the amount of damage it causes to the separation of powers mandate of our Constitution and the overall structure of our government is immeasurable.

PA 123, which included the remedial provisions at issue, enjoyed overwhelming bipartisan support in the Legislature before it was approved by Governor Engler. In the House, the bill received 101 yea votes and 7 nay votes. 1999 Journal of the House 1443-44 (attached hereto as Ex. F). In the Senate, all 38 of Michigan's state senators voted in support of the bill. 1999 Journal of the Senate 962-63 (attached hereto as Ex. G). To ignore the clear language of this statute would be to ignore the nearly unanimous bipartisan support the statute received in the Michigan Legislature. *See Robertson*, 465 Mich at 759 (criticizing the dissenting for ignoring the majority will of the Legislature).

If this Court affirms the decision of the Circuit Court and holds that the Circuit Court retained jurisdiction, the Court must then consider what meaning, if any, is to be prescribed to

the language in Section 78l? Will the Court ignore the Legislature's command that the Court of Claims has "original and exclusive" jurisdiction? To do so would violate another longstanding principle of statutory interpretation, namely, "courts must give effect to every word, phrase, and clause in a statute, and must avoid an interpretation that would render any part of the statute surplusage or nugatory." *Koontz v Ameritech Svcs, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002); *State Farm Fire and Casualty Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002); *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60; 631 NW2d 686 (2001).

2003 PA 263, which became effective on January 5, 2004, and added the following to the foreclosure provisions, is also relevant:

> A judgment entered under this section is a final order with respect to the property affected by the judgment and except as provided in subsection (7) shall not be modified, stayed, or held invalid after the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or for contested cases 21 days after the entry of a judgment foreclosing the property under this section.

MCL 211.78k(5)(g).

Although this provision was added after the judgment of foreclosure in the instant case, it provides useful insight into the Legislature's original intent in passing PA 123. PA 263 included an enacting section that stated, "section 78k(5) [and another provision] are curative and are intended to express the original intent of the legislature concerning the application of 1999 PA 123." 2003 PA 263, enacting section 1. Thus, the original intent of the Legislature – according to the Legislature – was that a judgment of foreclosure could not be modified or held invalid after the expiration of the redemption period in uncontested cases, with certain exceptions.

In this case, Perfecting Church failed to follow the statutory requirements, seeking relief from the judgment and return of possession of the affected parcel after the statutory deadline.

The Circuit Court ignored Section 781 and granted relief. To affirm this decision would contravene the Legislature's clearly stated purposed for PA 123: to encourage expeditious return to productive use of foreclosed property. If there is no finality to the foreclosure process, as was the case with the earlier system, title insurers will be reluctant to insure title, which, in turn, will slow sales, resulting in lingering unproductive property instead of redevelopment.

B. Michigan Court Rule 2.612(C) Must Yield to Statutory Provisions.

The Michigan Constitution calls for separation of powers among the three branches of government. *See* Const 1963, art 3, § 2. Authority to determine rules related to judicial practice and procedure is clearly vested in the Michigan Supreme Court. "The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state." Const 1963, art 6, § 5. Related to that point and in keeping with the principle of separation of powers, the Supreme Court cannot draft court rules that create or modify substantive law. *McDougall v Schanz*, 461 Mich 15, 27; 597 NW2d 148 (1999) (citing *Shannon v Ottawa Circuit Judge*, 245 Mich 220, 223; 222 NW 168 (1928)). MCR 2.612(C) allows a "court [to] relieve a party . . . from a final judgment, order, or proceeding" based upon certain grounds.

In *McDougall*, this Court considered the question of conflicts between court rules and statutory provisions. While the Court clearly has authority to determine the rules of practice and procedure, that power "extends *only* to matters of practice and procedure." 461 Mich at 27 (emphasis in original). If a conflict exists between a statute and a rule, courts must consider whether the statute addresses procedure or substantive law. This Court has held that a legislative enactment must prevail if it "reflects wide-ranging and substantial policy considerations [or, stated another way,] reflects a careful legislative balancing of policy considerations" important to Michigan's citizens. *Id.* at 35. *See also Lapeer Cty Clerk v Lapeer Circuit Ct*, 469 Mich 146,

164-165; 665 NW2d 452 (2003); *People v Cornell*, 466 Mich 335, 353; 646 NW2d 127 (2002) ("matters of substantive law are left to the Legislature").

While MCR 2.612(C) provides general guidance to the courts, the GPTA's provisions regarding foreclosure specifically contemplate the wide-ranging policy implications involved with property tax foreclosures. As a result of these policy considerations, the Legislature affirmatively provided the Court of Claims with original and exclusive jurisdiction in cases such as this one. The Legislature's language should prevail, and MCR 2.612(C) must yield thereto.[3]

C. The "Carving Out" of Jurisdiction for the Court of Claims is Perfectly Consistent with Michigan Law Regarding the Jurisdiction of the Circuit Courts.

The Revised Judicature Act ("RJA") defines Circuit Court jurisdiction as follows: "Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." MCL 600.605 (emphasis added). MCL 211.78l is a statute that gives exclusive jurisdiction to "some other court," thus, under the RJA, eliminating jurisdiction in the Circuit Court. Specifically, the foreclosure act "carves out" post-foreclosure claims for lack of notice and gives those cases to the Court of Claims. This type of jurisdiction is not unusual. *See, e.g., Hiyrich v*

[3] In its opposition to appellant's application for leave to appeal to this Court, Appellee Perfecting Church relied heavily upon the Court of Appeals' decision in *In re Petition by the Wayne County Treasurer for Foreclosure v Westhaven Manor Ltd Dividend Housing Ass'n* ("*Westhaven*"), 265 Mich App 285; 698 NW2d 879 (2005), in support of its claim that the Circuit Court retains jurisdiction despite the clear language of MCL 211.78l. (*See* Appellee's Brief in Opposition to Appellant's Application for Leave to Appeal, p. 8.) *Westhaven's* majority opinion will be discussed below, yet *Westhaven's* concurrence bears mention here. In his concurrence, Judge Zahra considered the question of whether a conflict existed between MCR 2.612(C) and Section 78k(6), which states that, subject to certain exceptions, after a certain time period, fee simple title to foreclosed property vests absolutely in the FGU and cannot be stayed or held invalid. *See Westhaven, supra* at 305 (citing MCL 211.78k(6)). Noting that a court rule that contravenes a legislatively declared public policy principle must yield to the statute, and that Section 78l specifically vests jurisdiction with the Court of Claims, MCR 2.612(C) must yield to the statute. *See Westhaven, supra* at 305-07.

State Fair Comm'n, 376 Mich 384; 136 NW2d 910 (1965) *disapproved on other grounds*, *State v Smith*, 122 Mich App 340; 333 NW2d 501 (1983) (granting the Court of Claims jurisdiction over claims against the State Fair Commission); *Taylor v Auditor General*, 360 Mich 146; 103 NW2d 769 (1960) *overruled in part, explained in part, Parkwood Ltd Dividend Housing Ass'n v State Housing Dev Auth*, 468 Mich 763; 664 NW2d 185 (2003) (granting the Court of Claims jurisdiction over the State Auditor General); *Norris v Liquor Control Comm'n*, 342 Mich 378; 70 NW2d 761 (1955) (granting the Court of Claims jurisdiction over claims against the State Liquor Control Commission); *Sprik v Regents of the Univ of Michigan*, 43 Mich App 178; 204 NW2d 62 (1972), *aff'd* 390 Mich 84; 210 NW2d 332 (1973), *Fox v Bd of Regents of the Univ of Michigan*, 375 Mich 238; 134 NW2d 146 (1965), *Kiluma v Wayne State Univ*, 72 Mich App 446; 250 NW2d 81 (1976), (granting the Court of Claims jurisdiction over state supported colleges and universities). Moreover, the Court of Claims has been determined to be the exclusive forum to adjudicate claims of condemnation without just compensation, which are similar to claims regarding the sale of foreclosed property. *Lim v Michigan Dep't of Transp*, 167 Mich App 751, 755; 423 NW2d 343 (1988); *Kelly v Holloway*, 191 Mich App 704, 705; 478 NW2d 677 (1991) ("the Court of Claims is the exclusive forum in which to seek damages for an alleged taking of an owner's property without just compensation").

In summary, the language of Section 781 is clear and unambiguous, and black-letter principles of statutory interpretation dictate that this Court must enforce the statute as written. Therefore, jurisdiction in this case properly rests in the Court of Claims only, and the Wayne County Circuit Court lacked jurisdiction. Support for this conclusion is also drawn from the fact that the Legislature has clearly carved out a niche for the Court of Claims and such carve outs are proper. Finally, MCR 2.612(C) must yield to Section 781 because the statutory provision in

Section 78l reflects policy considerations of the Legislature. For these reasons, the Circuit Court erred in asserting jurisdiction in the case, and should be reversed.

III. MCL 211.78L'S VESTING OF POST-JUDGMENT JURISDICTION IN THE COURT OF CLAIMS ONLY AND ITS LIMITATION TO MONETARY DAMAGES DOES NOT VIOLATE DUE PROCESS.

A. Due Process and the Notice Requirements of the Foreclosure Act.

Section 78l applies to a person "who claims that he or she did not receive any notice required under this act." MCL 211.78l. As background, a brief discussion of the notice requirements follows.

1. Background Information.

The United States and Michigan Constitutions prohibit depriving any person of property without due process of law. *See* US Const, Am XIV; Const 1963, art 1, § 17. In *Dow v Michigan,* 396 Mich 192, 211; 240 NW2d 450 (1976), this Court held that notice under the GPTA must be "directed to an address reasonably calculated to reach the person entitled to notice." After *Dow*, the Michigan Legislature enacted additional notice provisions. In a case considering the GPTA as it existed prior to PA 123's amendments, this Court recognized the constitutionality of those earlier notice provisions. *Smith v Cliffs on the Bay Condo Ass'n*, 463 Mich 420, 428; 617 NW2d 536 (2000) (the notice provisions in the GPTA "provide a constitutionally sound procedure for sale of property because of nonpayment of taxes.").

2. PA 123 Strengthened the GPTA's Notice Provisions.

In enacting PA 123, the Legislature established additional notice requirements for the foreclosure process, *see* MCL 211.78b, 211.78c; 211.78f, and added the requirement of a personal visit to the property. MCL 211.78i. While all notices under the former system were provided by first class mail, PA 123 require the final notice mailed prior to forfeiture to be by certified mail. MCL 211.78f(1). In *Karkoukli's Inc v Dohany*, 409 F3d 279, 282 (CA 6, 2005),

the Sixth Circuit Court of Appeals remarked on the GPTA after passage of PA 123, noting that the amendments now require up to five (5) notices, including one by registered mail and one by personal visit and/or posting. Clearly, if the GPTA's foreclosure provisions met minimum due process requirements prior to PA 123, the new law exceeds those standards, and one cannot argue that the statutory notice scheme itself violates due process.

3. Strict Compliance is Not Required.

In enacting PA 123, the Legislature stated that strict compliance with the notice provisions was not necessary:

> The failure of this state or a political subdivision of this state to follow a requirement of this act relating to the return, forfeiture, or foreclosure of property for delinquent taxes shall not be construed to create a claim or cause of action against this state or a political subdivision of this state unless the minimum requirements of due process accorded under the state constitution of 1963 or the constitution of the United States are violated.

MCL 211.78(2) (emphasis added). Caselaw supports this expression of legislative intent:

> No matter what efforts are made to give notice, the owner who has not, in fact, been provided notice will always contend that something more could have been done. This will make the process of tax sales completely unpredictable, destroying the government's ability to recoup unpaid taxes by foreclosing and reselling. For due process purposes, the focus must be on the constitutional adequacy of the statutory procedure and not on whether some additional effort in a particular case would have in fact led to a more certain means of notice.

Smith, 463 Mich at 431; *see also, Karkoukli's Inc*, 409 F3d at 284; *Sterling Bank & Trust, FSB v City of Pontiac*, unpublished opinion per curiam of the Court of Appeals, decided August 23, 2005 (Docket No. 249689) (attached hereto as Ex. H) at *1, *6.

Stated another way, "[t]his extensive notice procedure sufficiently protects the constitutional rights of property owners." *Burkhardt v Bailey*, 260 Mich App 636, 660; 680 NW2d 453 (2004) (citing *Smith*, at 428-29)); *see also Khondker v Wayne Cty Treas*, unpublished

opinion per curiam of the Court of Appeals, decided March 23, 2004 (Docket No. 246292) (attached hereto as Ex. I) at *1, *7.

Moreover, failure to provide notice is not prima facie evidence of a due process violation. *See Republic Bank v Genesee Cty Treas*, 471 Mich 732, 742; 690 NW2d 917 (2005) ("failure to give notice would not, standing alone, give rise to a due process claim."); *Sterling Bank & Trust, FSB*, *supra* at *7 ("the fact that plaintiff did not receive actual notice is insufficient by itself to demonstrate that the statutory procedures for providing notice were inadequate or constitutionally insufficient, and plaintiff makes no other showing why the notice provided under the statute violated its due process rights.").

4. This Case Involves a Glitch in a Good System.

The statement by the Sixth Circuit Court of Appeals, "there is at least some evidence that defendants attempted to comply with the statutory notice requirements" *Howard v City of Detroit*, 73 Fed Appx 90, 100 (CA 6, 2003) (attached as Ex. J), is equally true here. Although errors were unfortunately made in the case at bar, clearly, there were attempts to comply with the statutory provisions.

The Wayne County Treasurer obviously intended to follow the notice requirements of the GPTA's foreclosure provisions. As acknowledged by Perfecting Church, the Treasurer mailed notices via certified mail and attempted to post notice at the location. (*See* Appellee's Brief in Opposition to Appellant's Application for Leave to Appeal, p. 2.) Perfecting Church has not claimed that the Treasurer intentionally tried to circumvent the process or commit fraud against the property owners. There is no evidence to support such an allegation, in fact, the record shows the Treasurer's intention to comply with the law. This case involves an inadvertent error in a good system. Admittedly, mistakes were made, yet these isolated incidents do not require

the sweeping conclusion that Section 78l of the GPTA permits a person to be deprived of property without being afforded due process.

B. Exclusive Jurisdiction in the Court of Claims for Cases Involving Lack of Notice Does Not Violate Due Process.

Section 78l provides that a person who claims that he or she did not receive notice of foreclosure may only bring a claim for monetary damages and grants the Court of Claims exclusive jurisdiction to address such claims. MCL 211.78l. In light of the statute's clear command, courts are obligated to carry out the legislative intent. *See, e.g., Schaefer*, *supra*; *DiBenedetto*, *supra*; *Halloran*, *supra*. Further, it is a longstanding principle that statutes are presumed constitutional unless unconstitutionality is clearly apparent. *See DeRose*, *supra* (citing *McDougall*, *supra* at 24); *Cruz v Chevrolet Grey Iron Div of General Motors Corp*, 398 Mich 117, 127; 247 NW2d 764 (1976) ("a statute comes clothed in a presumption of constitutionality").

Nothing raised by Perfecting Church or set forth in statutory language or caselaw suggests that granting jurisdiction to the Court of Claims to hear such cases violates due process. The Court of Claims was established by the Legislature to hear claims including "claims and demands, liquidated and unliquidated, ex contractu and ex delicto, against the state and any of its departments, commissions, board, institutions, arms or agencies." MCL 600.6419(1)(a). Claims against a county treasurer (or the State, for those counties for which it acts as the FGU) resulting from their sale of foreclosed land are clearly claims against a state department or agency and, as such, are four-square properly before the Court of Claims.[4]

[4] This Court recently confirmed the broad jurisdiction of the Court of Claims. *Parkwood Ltd Dividend Housing Ass'n*, *supra* at 773-774.

As to the Court of Claims' jurisdiction over constitutional claims, in the similar subject matter of condemnation without just compensation, the Court of Claims has been held to have jurisdiction to hear such claims. *See Lim*, *supra*; *Kelly*, *supra*. Similarly, the Court of Claims can consider claims involving potential due process violations in response to lack of notice. The bottom line is that a requirement that a claim be pursued in a specific court, here, in the Court of Claims, rather than the court of the claimant's choosing, does not rise to the level of a due process violation.

1. Reliance on *Westhaven* is Inappropriate because *Westhaven's* Logic is Flawed.

MACT anticipates that Perfecting Church will rely heavily upon the majority opinion in *Westhaven* in support of its argument that because Perfecting Church did not receive notice of the foreclosure, the judgment of foreclosure failed to meet minimum due process requirements, and the Circuit Court retained jurisdiction to vacate the judgment. (*See* Appellee's Brief in Opposition to Appellant's Application for Leave, p. 7.) It is MACT's position that the Court of Appeals' decision in *Westhaven* was wrongly decided, and should not influence the Court's determination of this case. (Not to mention the fact that this Court is not bound by decisions of the Court of Appeals.)

Westhaven held that "the circuit court retains its subject-matter jurisdiction over its previously issued foreclosure judgment," if there has been a due process violation. In support of its holding, *Westhaven* interpreted Section 78i(2) as providing that "if an interested party's minimum due process rights are violated, any proceeding that affected the interested party's property rights is invalidated and a cause of action may be maintained against the foreclosing governmental unit by the interested party for failure to provide the requisite statutory notice." *Westhaven*, *supra* at 288. However, there are significant problems with *Westhaven's* holding.

First, *Westhaven* does not cite any statutory provision in support of its holding that the Circuit Court retains subject matter jurisdiction. It does not because it cannot. The GPTA's foreclosure provisions do not provide for continued subject matter jurisdiction in the Circuit Court. In fact, as discussed above, the GPTA specifically provides that the Court of Claims has original and exclusive jurisdiction over post-foreclosure claims involving lack of notice. MCL 211.78l. In addition, the GPTA specifically states that a judgment of foreclosure "is a final order with respect to the property affected by the judgment . . . [and] shall not be modified, stayed, or held invalid." MCL 211.78k(5)(g).

Second, the provision relied upon by the *Westhaven* court actually reads as follows:

> The failure of the foreclosing governmental unit to comply with any provision of this section shall not invalidate any proceeding under this act if the owner of a property interest or a person to whom a tax deed was issued is accorded the minimum due process required under the state constitution of 1963 and the constitution of the United States.

MCL 211.78i(2). While the provision clearly states that the failure of an FGU to comply with a particular provision shall not invalidate a proceeding, so long as due process is provided, one cannot assume that the Legislature intended the meaning suggested by *Westhaven*, *i.e.*, that a violation of due process automatically results in the invalidation of the prior proceeding. Had the Legislature intended to say that failure to meet due process requirements requires the invalidation of a proceeding, it could have easily said so.[5]

[5] It must also be pointed out that it does not logically follow that a court's post-judgment jurisdiction depends upon the propriety of its earlier foreclosure. As a practical matter, in order for a Circuit Court to examine a foreclosure proceeding and make any determination regarding whether a foreclosure proceeding satisfied due process, the circuit court has to assert its own jurisdiction. Following this logic, would Perfecting Church assert that if notice had fully complied with the statute that the Circuit Court would *not* have jurisdiction?

Finally, the precedential value of the *Westhaven* decision is questionable on a going-forward basis. *Westhaven* noted that it considered the GPTA as of the date of the foreclosure petition's filing, June 14, 2001, and that the GPTA was amended twice after the foreclosure filing. *See Westhaven*, *supra* at 287 n1. At best, *Westhaven* provides support for a small number of cases that fit within its timeframe. Courts considering cases involving foreclosures after the effective date of the 2003 Act, January 5, 2004, will have the benefit of additional language regarding foreclosure judgments. On a going forward basis, Courts will consider Section 78k(5)(g), which states that a judgment of foreclosure "is a final order and [except through an appeal to the court of appeals within a certain time frame] . . . shall not be modified, stayed, or held invalid [after a certain time period]." MCL 211.78k(5)(g). Because *Westhaven* has limited applicability and is contrary to the statutory language, it is inapplicable and Perfecting Church cannot show that the exclusive jurisdiction provision of Section 78l violates due process.

C. Section 78l's Limitation to Monetary Damages Does Not Violate Due Process.

In *Builders Unlimited, Inc v Oppenhuizen*, unpublished opinion per curiam of the Court of Appeals, decided June 12, 2005 (Docket No. 254789) (attached hereto as Ex. K), the Court of Appeals considered the defendant's argument that because the defendant's predecessors in interest did not receive notice of foreclosure, the foreclosure sale should be deemed invalid with defendant's interest in the property remaining. In holding against the defendant, the Court of Appeals stated:

> MCL 211.78l clearly and unambiguously contemplates situations where no notice was given, yet it does not result in the divestiture of fee simple title in the foreclosing governmental united as created by § 78k, but leaves open only a claim for monetary damages. The Legislature evidently chose to keep chains of title clear and property interests unencumbered in case of notice failures, but still provide an unnoticed interest holder refuge in a monetary action for damages.

Builders Unlimited, Inc, at *9. In other words, such property owners are not left without any remedy, rather, they may recover the fair market value of the property involved, less any taxes or fees owed.

1. PA 123 Created a Property Right in the Post-Foreclosure Purchaser after Foreclosure.

It is important to keep in mind one of the Legislature's key goals in passing PA 123 – to create finality in the process for purchasers of foreclosed property, allowing title insurers to insure such parcels with confidence. The rights of those who purchase foreclosed property must also be considered. It is a longstanding principle that absolute title vests after the expiration of the statutory redemption period. *See Langford v Auditor General*, 325 Mich 585, 587-588; 39 NW2d 82 (1949); *Lowrie & Webb Lumber Co v Ferguson*, 312 Mich 331, 333; 20 NW2d 209 (1945) (after the redemption period, the state became the owner "free and clear of all liens and encumbrances, and a new chain of title was started"). The purpose of cancellation of interests is to encourage purchase by a third party in order to restore property to the tax rolls. *See Sonenklar v Farmington Twp Bd*, 25 Mich App 387, 391; 181 NW2d 574 (1970); *Wayne Co Chief Exec v Mayor of the City of Detroit*, 211 Mich App 243, 247; 535 NW2d 199 (1995).

Cases involving claims of deprivation of property also provide support for the rights of subsequent purchasers. In *Parratt v Taylor*, 451 US 527; 101 S Ct 1908; 68 L Ed 2d 420 (1981), the United States Supreme Court considered an inmate's claim that his due process rights had been violated due to the loss of a hobby kit that he had ordered but which had been lost in the mail. In considering whether the kit constituted a property interest for the inmate, the Court stated that property interests are not created by the Constitution but are created by sources such as state law. 451 US at 529, n1. Based upon *Parratt*, the Michigan Legislature had the authority to vest a property interest in those who purchase property at a foreclosure sale. *See e.g.* MCL

211.78k(5) (rights of redemption expire a certain time period after foreclosure judgment); MCL 211.78k(5)(g) (judgments become final orders that cannot be modified, stayed, or held invalid after a certain time period and subject to a court of appeals decision). The potential impact of this Court's decision upon the subsequent purchasers of property, such as Appellants in this case, must be considered.

Parratt was overruled in part by *Daniels v Williams*, 474 US 327, 328; 106 S Ct 662; 88 L Ed 2d 662 (1986), another case involving an inmate who claimed that his due process rights had been violated by a correctional deputy. While the *Parratt* Court stated that a loss, even if negligently caused, amounted to a deprivation, the *Daniels* Court determined that the due process clause is not implicated by the negligent act of an official. *Daniels* went on to hold that a lack of due care does not rise to a deprivation of a life, liberty or property interest. 474 US at 330-31. "Historically, this guarantee of due process has been applied to deliberate decisions of government officials to deprive a person of life, liberty or property." *Id.* at 331 (citations omitted). Instead of an abuse of power, the official in *Daniels* simply failed to "measure up to the conduct of a reasonable person." *Id.* at 332. In other words, if a government official is merely negligent, as in the instant case, the constitution does not require a process for compensation. *Id.* at 333; *see also Rushing v Wayne Cty*, 436 Mich 247, 275 n4; 462 NW2d 23 (1990) (Boyle, J., concurring); *Marlin v City of Detroit*, 205 Mich App 335, 340; 517 NW2d 305 (1994) ("mere negligence does not work a deprivation in the constitutional sense").

Read together, *Parratt* and *Daniels* suggest that the Michigan Legislature validly acted to create a property interest in purchasers at auction, and the Treasurer's inadvertent errors in issuing notice do not constitute a deprivation of a property interest requiring compensation. But recall that the Act does give property owners compensation in the form of a money judgment.

Thus, far from violating due process, the statute at issue gives more rights to property owners than is required under the law. At this point, the Treasurer has sold the parcel at issue. Going one step further, the buyers here, Tatarian and Kelly, have also sold the property. Neither the Treasurer nor Tatarian and Kelly hold an interest in the property. Neither the Treasurer, nor the buyers at the tax sale can be compelled to return what they don't have. *See Kennedy v Hazelton*, 128 US 667, 671; 9 S Ct 202; 32 L Ed 576 (1888); *Rodgers v Beckel*, 172 Mich 544, 548; 138 NW 202 (1912).

Without the certainty that PA 123 intends to provide, the State of Michigan stands to lose a key tool in encouraging economic growth through redevelopment and curbing urban blight. Without such certainty, the City of Detroit, for example, may again be faced with tens of thousands of parcels of property highly unattractive for redevelopment. *See* Detroit News, September 28, 1999 article (attached as Ex. C) (noting that prior to passage of PA 123, Detroit held 50,000 tax delinquent parcels). Other communities around Michigan would face a similar disincentive to redevelopment.

2. Michigan's Escheat Law Creates an Analogous Mechanism to Deal with Property.

Michigan's Uniform Unclaimed Property Act ("Escheat Act"), 1995 PA 29, provides a useful comparison for this situation. The Escheat Act provides for the reporting and disposition of unclaimed personal property in Michigan. MCL 567.221 – 567.265. Generally, the statute provides that if a property owner fails to take any action in relation to the property for at least two years, the property is deemed abandoned. MCL 567.248. At that point, if certain conditions are met, the property becomes the custody of the state as unclaimed property. MCL 567.224. The state assumes custody of the property and bears responsibility for its safekeeping for recovery by the rightful owner. MCL 567.241(1).

Like the foreclosure provisions within the GPTA, the Escheat Act includes several provisions for notice to persons or entities who may be owners of abandoned property. MCL 567.238; 567.239; 567.243. The Escheat Act allows a person to claim an interest in the property by filing a claim with the state treasurer. MCL 567.245. Similarly, the GPTA's foreclosure provisions allow a person to redeem property, even after a judgment of foreclosure, if a person acts within a certain time frame. MCL 211.78k(5); MCL 211.78k(7). Not later than three (3) years after receiving abandoned property, the state treasurer shall sell the property to the highest bidder. MCL 567.243(1). The statute creates a property right in the purchaser of property at such a sale; the purchaser "takes the property free of all claims of the owner or previous holder of the property and of all persons claiming through or under the owner or previous holder." MCL 567.243(4).

Like the foreclosure provisions of the GPTA, the Escheat Act was established by the state to manage property, with an emphasis on redemption by a properties' owner. Like the GPTA's foreclosure provisions, the Escheat Act provides notice, yet the GPTA's provisions are significantly stronger. The Escheat Act has a greater emphasis on notice by publication, MCL 567.239, which is a method of notice that is optional in the GPTA's foreclosure provisions, which utilizes first class and registered mail and a personal visit. MCL 211.78b, 211.78c, 211.78f, 211.78i. As with the foreclosure provisions, after redemption periods have expired, the Escheat Act provides for finality and certainty for purchasers of such property against others' claims. To date, the Escheat Act has not been determined to violate due process, so by analogy, it provides support for the constitutionality of the GPTA's foreclosure provisions.

It is clear under the law that the damages limitation in that MCL 211.78l does not violate due process. Although due process does not require that property owners be provided a remedy

based on the negligence of a treasurer's office, the statute nonetheless does provide such owners with a remedy. The fact that such foreclosed owners do not have the specific remedy they may want does not mean they are deprived of due process.

CONCLUSION AND RELIEF REQUESTED

The Michigan Association of County Treasurers joins in the request of the Intervening Parties-Appellants that the July 7, 2004 Order Granting Relief From Judgment be reversed.

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: _____

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Dated: April 21, 2006

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Exhibit K	*Builders Unlimited, Inc v Oppenhuizen*, unpublished opinion of Court of Appeals, decided June 12 2005.

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EXHIBIT A

STATE OF MICHIGAN

IN THE SUPREME COURT

APPEAL FROM THE MICHIGAN COURT OF APPEALS

IN RE PETITION BY TREASURER OF
WAYNE COUNTY FOR FORECLOSURE

WAYNE COUNTY TREASURER,
Petitioner,

and

MATTHEW TATARIAN and MICHAEL KELLY,
Intervening Parties-Appellants,

v Docket No. 129341

PERFECTING CHURCH,
Respondent-Appellee.

_____/

AFFIDAVIT OF DIANNE H. HARDY

STATE OF MICHIGAN)
) SS.
COUNTY OF LIVINGSTON)

Dianne H. Hardy, being first duly sworn, deposes and states:

1. I, Dianne H. Hardy, am President of the Michigan Association of County Treasurers ("MACT").

2. I have personal knowledge of the facts stated in this affidavit and, if sworn as a witness, am competent to testify thereto.

3. MACT is a non-profit incorporated association formed in 1934, which includes as its members every county treasurer from the State of Michigan's 83 counties.

4. MACT was actively involved in the drafting and amendment of the bill that became 1999 Public Act 123 ("PA 123"), which significantly revised the process for the collection of delinquent taxes, forfeiture, foreclosure and sale. MACT worked closely with legislators and officials within the administration to provide expertise based upon the experience of its members.

5. It is MACT's opinion that a critical component of PA 123 is Section 78l, which provides that a person who claims that he or she did not receive notice of foreclosure may only bring a claim for monetary damages and grants the Court of Claims original and exclusive jurisdiction to address such claims. *See* MCL 211.78l.

6. Section 78l's limitation of remedy to money damages is important for the following reasons. The former process was strictly construed by the courts to allow delinquent taxpayers or interestholders to redeem property after foreclosure. As a result, under the former system, title insurance companies generally declined to insure title to tax-reverted properties without a quiet title action. Even with such an action, some remained reluctant or simply refused.

7. Based upon our involvement with the drafting and passage of PA 123, we understand that the Legislature sought to address the title insurance issue by limiting the remedies available to former owners who lost property through tax foreclosure to an action for money damages in the Court of Claims. This remedy limit was intended to make title to foreclosed property insurable by eliminating the possibility of foreclosed property being reacquired by the delinquent former owners or interestholders through the courts.

8. If the remedy limit is rejected, deemed invalid, or declared unconstitutional, in our opinion, title will only be insurable on a case-by-case basis where it can be shown that notice was received by all interestholders entitled to notice. Such resultant constraints upon insurable title would certainly diminish the positive impact PA 123 has had in returning delinquent property to productive, taxpaying status.

Further affiant sayeth not.

Dianne H. Hardy

Subscribed and sworn to before me
this 19 day of April, 2006.

JAMIE M. PALMER
Notary Public, Livingston County, Michigan
My Commission Expires: 8/26/07
Acting in the County of Livingston

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EXHIBIT B

HUDSON
INSTITUTE

History Lesson Shapes Future Urban Policy In Michigan

July 19, 1999

Michigan Urban Housing Initiative Op-Ed

July 19, 1999

This week marks a milestone in America's urban policy. Michigan Gov. John Engler will sign legislation creating the first state-level urban homeownership strategy in the United States.

Traditionally, states haven't been major players in urban policy. For half a century, the cities' problems have been dealt with on a federal-local axis, with the federal government creating programs and funneling the dollars to the cities directly. Despite good intentions, this approach has been a disappointment. Most of the older Northeast and Midwest cities have been steadily losing population and business activity - both to their suburbs and to the newer cities in the South and West. Ironically, perhaps, the recent signs of revival in some of these cities have come as the federal government retreated from its activist role.

Michigan's new strategy is based on an old idea: President Lincoln's Homestead Act of 1862. Back then, if farmers settled on vacant land and cultivated it for five years, it was theirs. Today, homesteading is as relevant to our cities as it was to the pioneers on our prairies over a century ago. Abandoned houses and vacant lots - in some communities whole blocks of them - are a familiar feature of the urban landscape.

The Michigan Urban Housing Initiative applies the original homesteading concept to these properties. Families who move into abandoned houses, live in them for five years and bring them up to code, can own their homes. Meanwhile, families who want to achieve the American Dream by building their homes on vacant land can acquire title to both land and house. Families living in public housing can become homeowners, too - in the same way as urban homesteaders, if they live in single-family public housing or by establishing cooperatives if they live in apartment projects.

Michigan residents won't be tripped-up with fine-print qualifications either. A family must be below median income with at least one employed adult and all school-age children enrolled and attending classes. In addition, no family member can have a drug felony conviction during the preceding three years. (This parallels the 19th Century rule that homesteaders had to be law-abiding - they could not have born arms against the Union.) If the family has a history of credit problems, they must attend credit counseling.

The Michigan Urban Housing Initiative was developed by the Hudson Institute, at the request of Michigan officials and with support from Michigan foundations. State Sen. Bill Schuette, chairman of the Economic Development Committee, was particularly interested in promoting homeownership in the core cities.

The Hudson project team spent two years talking to people throughout Michigan. Team members visited nearly all of Michigan's urban core cities, learning from the mayors, council members, city

officials, civic leaders, nonprofit organizations and business groups. They also met with the Governor and other state officials, and with state legislators in both houses and both parties.

In the course of these discussions, one major roadblock to urban revitalization surfaced - the state's antiquated system for handling tax-delinquent real estate. Enacted in 1893, Michigan's tax reversion system was designed to protect homeowners and farmers who have temporary financial difficulties. Despite this laudable objective, the system fails completely to address the cities' problem of abandoned housing. Under the current system, it takes six years -six Michigan winters - for abandoned property to work its way through the tax reversion system. Meanwhile, responsibility for the house bounces from the city to the county treasurer and then to the state government before eventually being returned to the city.

The consequences are devastating for the cities. Once abandoned, homes deteriorate until they are unfit to live in and blight the neighborhoods where they are located, while the tax reversion process grinds on. To make things worse, the property often comes back to the city with a questionable legal title so it can't be sold or used for public purposes. For example, Detroit reports that it has 46,000 parcels of tax-reverted land without clear title. Many other Michigan cities have the same problem on a smaller scale.

Hudson designed a complete new system that is shorter and simpler and gives clear title to the city. This new process takes less than three years - half the current schedule. At the same time, it provides more notice and offers more protection to property owners than the current law. In addition, Hudson designed a voluntary fast track that cities can use to bring abandoned property back into productive use within 18 months, before they have deteriorated past the point of no return.

These abandoned houses also will be available for other urban revitalization activities, not just homesteading. This will help the state's community development organizations, which have been handicapped by the tax reversion system and strongly supported reform.

Taken together, these proposals encourage the reclamation of deteriorating urban neighborhoods and preserve existing communities.

The proposals received large bipartisan majorities in both houses of the legislature, with state Sen. Schuette leading the charge. State Rep. Patricia Birkholtz, chairwoman of the Local Government Committee, was the chief sponsor in the House.

The next step is up to the cities. They can participate in urban homesteading and expedite the tax reversion of abandoned property by passing enabling ordinances. The full tax reversion reform goes into effect next January 1, at the start of the new millennium. Perhaps that's an omen of better times for Michigan's cities.

EXHIBIT C

Challenge of America."
nd dozens of smaller ones.

year, $100-million land acquisition from Interstate 75 to Dequindre.

The state then spent another $143 million for right-of-way acquisition and $147 million for construction to complete the project.

the highway through Utica an the reconstruction of the I-94 an M-59 interchange — are all bein completed a year ahead of sched ule because of the increase in roa construction funds.

CAPITAL REPORT

Detroit News, September 28, 1999

15 legislative proposals encourage 'homesteading'

Plans would make it easier for cities to recycle vacant homes.

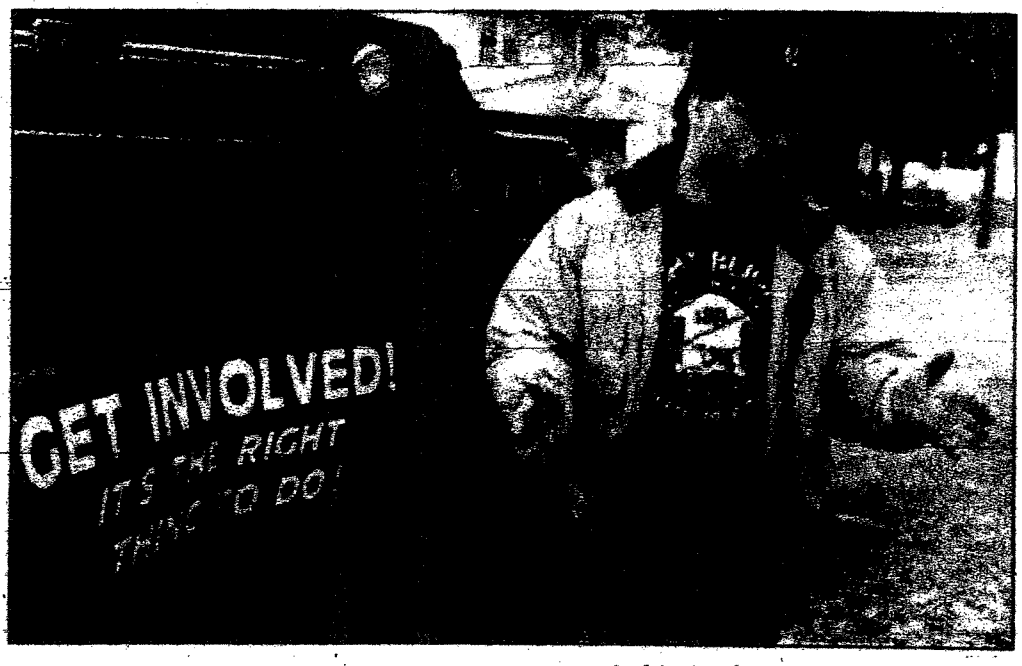
By Gary Heinlein
Detroit News Lansing Bureau

LANSING — Proposals to encourage "urban homesteading" are headed for the Legislature in the next few months.

Proponents compare it to the 1862 Homestead Act that settled the American West. They say the 15 proposals, if approved, would make it easier for cities such as Detroit, Flint and Saginaw to recycle abandoned homes, vacant lots and derelict commercial buildings in urban core areas.

"We thought if it could work in the prairies of yesterday, it could work in the cities of today," said senior fellow John Weicher of the Hudson Institute, an international think tank whose recommendations framed the legislation.

The Hudson Institute is credited with developing Wisconsin's welfare reform plan, which became the model for welfare reform in Michigan and othe states. State Sen. Bill Schuette, R Midland, who is lining up legisla tive sponsors from both parties said this is the next step and proo the GOP has an urban plan.



Robin Buckson / The Detroit New

Many homestead programs "have been terrible failures," says John George, president of Motor City Blight Blusters.

Constituents lose

Lansing Memo: Scrapped debate hurts voters. **Page 6C**

Please see PROPOSALS, Page 6C

PROPOSALS

Continued from Page 1C

It would cut by about two-thirds the time required for cities to gain title to abandoned properties, make it much easier to "homestead" vacant urban parcels or homes, allow rental tenants of public housing to form ownership cooperatives and let cities more easily pool vacant land for redevelopment.

One Detroit neighborhood leader said the biggest value probably lies in uncomplicating the process of gaining title to parcels that would be assembled into larger tracts.

"I could picture subdivisions as a phenomenal tool for attracting people back into the city," said John O'Brien, director of Northwest Detroit Neighborhood Development.

His organization has spearheaded the building of 50 area homes, most in cooperation with Habitat for Humanity, and now has plans — and land — for 50 more. Gaining title is the hardest part, he said, recalling that procedure took three years on land for a new postal building at Fenkell and Patton.

Marge Mularney, lobbyist for the city of Detroit in Lansing, said the package of bills sounds like something Detroit would support. But Mayor Dennis Archer is waiting for more specifics.

"It's got some interesting concepts, but we want to take a look at the whole thing," Mularney said.

O'Brien is skeptical the city will significantly benefit from a part of the package encouraging people to occupy and repair older, abandoned homes.

"Is this going to attract people back *into* the city or just encourage people to move around *in* the city?" he asked. "These programs haven't really caught on and attracted a lot of new people."

John George, who heads Motor City Blight Busters, said he wishes the Hudson Institute had consulted him.

Many homestead programs "have been terrible failures" because "they weren't reality-based," George said.

The Detroit News

A proposal by the Hudson Institute would cut by about two-thirds the time required for cities to gain title to abandoned homes, like this one on Fairview in Detroit.

Too often, he said, buyers can barely afford what the city wants in order to pay back taxes — let alone do repairs — and can't get fix-up loans because they can't obtain uncontested titles.

What will work, he said, is to make it possible for nonprofit organizations, like his, to gain title at no cost, borrow money for repairs, then resell them at low prices.

"We've got the money, got the crews, got the wherewithal, the rakes, brooms and tools ... to do the job," George said. "We just can't get the property fast enough."

Urban homesteading has been tried with mixed results in the past. But those pushing the current bills, while acknowledging that even the homesteading of the West was laced with tales of failure, say they have key components to overcome hurdles that killed past efforts.

Patrick Anderson, head of a Lansing-based financial consulting firm, said he did a study 10 years ago that found that Detroit alone had 50,000 parcels on which the owners had stopped paying property taxes.

Anderson, who helped with the Hudson study, said the biggest obstacle to reuse of that property was the complex process, taking a minimum of six years, by which a city gains title.

"This was a problem when the city started to assemble property for the casinos and stadiums," Anderson said. "They found that if the process wasn't broken, many of the parcels would have been in city hands years ago."

A key element is easing the procedures for clearing the title to a property, said Jeff Reno, a tax reversion expert who delayed doctoral studies at Michigan State University to work on the project.

The legislation would let a city development office or nonprofit organization get clear title within a year of tax delinquency. On an abandoned home, the organization could loan money for remodeling, with a tenant paying rent over a five-year period.

At that point, the tenant would own it free and clear.

"The value (of the home) is zero right now," said Reno. "The value at five years is what the family put into it, so why not let them have the equity?"

Schuette said some of the bills already have been introduced and others will be introduced during the lame-duck session that starts Nov. 5. Even those that don't pass, he said, will have that "momentum" when they are reintroduced in the new session next year.

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JUVENILE

Continued from Page 1C

The construction project has

early 1990s, when U.S. Justice Department officials probed allegations of civil rights violations at the youth home.

Eventually the county opted for

services reserve" fund and $750,000 from a 1996 tax levy for the land, purchased from the city of Detroit.

Community youth advocates say

"If you
he or she
pro-activ
"Do it

EXHIBIT D

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 343 (as enrolled)	**PUBLIC ACT 127 of 1999**
Senate Bill 344 (as enrolled)	**PUBLIC ACT 128 of 1999**
Senate Bill 346 (as enrolled)	**PUBLIC ACT 129 of 1999**
Senate Bill 347 (as enrolled)	**PUBLIC ACT 130 of 1999**
Senate Bill 348 (as enrolled)	**PUBLIC ACT 131 of 1999**
Senate Bill 488 (as enrolled)	**PUBLIC ACT 132 of 1999**
Senate Bill 489 (as enrolled)	**PUBLIC ACT 133 of 1999**
Senate Bill 507 (as enrolled)	**PUBLIC ACT 134 of 1999**
House Bill 4489 (as enrolled)	**PUBLIC ACT 123 of 1999**
House Bill 4509 (as enrolled)	**PUBLIC ACT 84 of 1999**

Sponsor: Senator Bill Schuette (S.B. 343 & 507)
Senator Ken Sikkema (S.B. 344)
Senator Virgil C. Smith, Jr. (S.B. 346)
Senator Bob Emerson (S.B. 347)
Senator Bev Hammerstrom (S.B. 348)
Senator Glenn D. Steil (S.B. 488)
Senator Gary Peters (S.B. 489)
Representative Patricia Birkholz (H.B. 4489)
Representative Ruth Ann Jamnick (H.B. 4509)

Senate Committee: Economic Development, International Trade and Regulatory Affairs
House Committee: Local Government and Urban Policy

Date Completed: 9-3-99

RATIONALE

In 1862, the U.S. Congress passed the Homestead Act to provide for the transfer of unoccupied public lands in the West to each homesteader who paid a nominal fee and occupied the land for five years. Men over 21 years of age, unmarried women who were heads of households, and married men under 21, who did not own over 160 acres of land anywhere, and who were U.S. citizens or applicants for citizenship, were eligible to become homesteaders and claim up to 160 acres of land.

The Hudson Institute and others believe that this homestead concept can be applied to an urban housing initiative in order to generate homeownership for low income families and help rebuild Michigan's inner cities. Although many parts of the State are experiencing economic growth, some urban communities in Michigan have not been able to share in this prosperity. Reportedly, in neighborhoods with many vacant buildings and large parcels of vacant land, the remaining residents have no connection to the economy. In addition, it has been reported that more than half of the homes in the State's urban core are rental housing.

The Hudson Institute (a public policy research organization headquartered in Indianapolis) developed an urban homestead concept patterned after the Homestead Act of 1862. This concept would allow qualified individuals to "homestead", or take over, abandoned homes and bring them up to acceptable standards; allow qualified individuals to develop and construct a home on vacant land and acquire title to the land; and allow qualified individuals and organizations to acquire public housing units they are now renting. Many people believe that increased homeownership is the key to rebuilding urban neighborhoods, increasing economic responsibility, and promoting stability and pride in the communities.

Since some Michigan inner cities are replete with vacant, abandoned housing, and vacant tracts of land, many people believe that these properties should be used to implement the urban homestead concept. Blighted and abandoned property in residential areas can do great harm to the residents who remain. In addition to lowering property values and generally depressing economic activities within the neighborhood, abandoned property can be a magnet for criminal activities, which only causes increased abandonment and deterioration. Some neighborhoods in older urban areas can turn from

bad to worse in a short number of years unless the local unit takes action to reverse the trend. Before municipalities can do anything with derelict, abandoned property, however, they must first obtain title to that property.

Michigan's tax reversion process is considered overly complicated and can take up to five or six years from delinquency to foreclosure. (A very brief overview of the process is contained in **BACKGROUND**, below.) Although it was designed to give property owners ample time and opportunity to pay taxes to redeem their property, the process reportedly affords inadequate protection to property owners, often results in a title of questionable legal value, and permits unscrupulous individuals to exploit both low-income families and local units. Some people believe that reforming the tax reversion process will make it easier for local units to obtain title to abandoned property and vacant land for redevelopment, including use in the urban homestead program.

CONTENT

Senate Bill 343 created the "Urban Homestead Act" to provide that a local governmental unit may operate, or contract with a nonprofit community organization to operate, an urban homestead program that makes property available to qualified buyers. If a qualified buyer complies with a lease agreement for at least five years, the administrator (the local unit or a nonprofit organization) must deed the property to the buyer for $1.

Senate Bill 344 created the "Urban Homesteading in Single-Family Public Housing Act" to permit local units to authorize a housing commission or nonprofit community organization to operate an urban homestead program that makes single-family public housing available to qualified buyers. After five years, a qualified buyer may be eligible to acquire the property for $1 or the amount of Federal bonded indebtedness on the property.

Senate Bill 346 created the "Urban Homesteading on Vacant Land Act" to authorize a local unit to operate an urban homestead program that makes vacant land available to qualified individuals. If an applicant substantially meets the criteria for a qualified buyer and receives a commitment to finance construction on the vacant property, then the local unit must deed the property to the applicant for $1.

Senate Bill 347 amended Public Act 18 of the Extra Session of 1933 (which authorizes cities, villages, townships, and counties to purchase, construct, operate, and maintain housing facilities) to provide that a housing commission created under the Act must adopt rules that establish the operation of homesteading programs as provided under Senate Bill 344 and House Bill 4509.

Senate Bill 348 amended the State Housing Development Authority Act to authorize the Michigan State Housing Development Authority (MSHDA) to make loans to certain qualified buyers and resident organizations, and make grants to resident organizations as provided under Senate Bills 343, 344, and 346, and House Bill 4509.

Senate Bill 488 created the "Certification of Abandoned Property for Accelerated Forfeiture Act" to provide for the certification of abandoned tax delinquent property if a local unit makes a declaration of accelerated forfeiture of abandoned property as specified in the bill; establish criteria for abandoned property identification; require notice to property owners or to the taxpayer of record; and allow an owner or a person with a legal interest to file an affidavit claiming the property is not abandoned. The bill was tie-barred to Senate Bills 343 and 489 and House Bill 4489.

Senate Bill 489 amended the General Property Tax Act to provide that for taxes levied after December 31, 1998, certified abandoned property is subject to forfeiture, foreclosure, and sale for the enforcement and collection of the delinquent taxes as provided in the bill and in House Bill 4489. Senate Bill 489 also provides that a person who holds a tax deed to abandoned property may quiet title to that property after a title search, notice by mail or publication, a building inspection, and the posting of a foreclosure notice; allows owners of foreclosed property to bring an action to recover monetary damages within two years after judgment is made; and specifies the requirements for property to be considered abandoned. The bill was tie-barred to Senate Bills 343 and 488 and House Bill 4489.

Senate Bill 507 created the "Tax Reverted Property Emergency Disposal Act" to allow a local unit of government (a city, village, or township) to obtain clear title to tax reverted property whose title has vested in the local unit before January 1, 2000, and dispose of that property if a declaration of emergency backlog is made and approved as provided in the bill. The bill also requires notice for all persons with a recorded interest in the tax reverted property; allows a local unit to bring a quiet title action; and allows objections to a quiet title action. If a judgment is entered, the bill allows the local unit in which the property is located or a person

claiming an interest in the property to appeal the circuit court's judgment to the Court of Appeals. The bill was tie-barred to House Bill 4489.

House Bill 4509 **created the "Urban Homesteading in Multifamily Public Housing Act" to permit local units to authorize a housing commission to operate an urban homestead program that makes multifamily public housing available to qualified buyers and resident organizations. After five years, a qualified buyer or a resident organization may be eligible to acquire the property for $1 or the amount of Federal bonded indebtedness on the property.**

House Bill 4489 **amended the General Property Tax Act to provide that for taxes levied after December 31, 1998, tax delinquent property is subject to forfeiture, foreclosure, and sale as provided under the bill. The bill repeals sections on certified special residential property; repeals, as of December 31, 2003, sections governing tax sales and notice; and repeals, as of December 31, 2006, sections governing redemption, challenges to tax sales, responsibilities of the Department of Natural Resources, and other matters concerning tax-reverted property.**

The bill establishes fees on each parcel of tax delinquent property; creates the "Land Reutilization Fund"; requires county treasurers to conduct a title search; requires notices of tax delinquency, forfeiture, and foreclosure to persons with an interest in the property; requires oral advice about foreclosure to occupants and tenants of tax delinquent property; allows owners of foreclosed property to appeal to the Court of Appeals and/or bring an action to recover monetary damages in the Court of Claims; allows a foreclosing governmental unit to sell the property and deposit the proceeds into a restricted account, which may be used only for reimbursing the delinquent tax revolving fund and paying costs of sale, foreclosure, and maintenance; and requires any remaining balance to be transferred to the Land Reutilization Fund. The bill is effective October 1, 1999, and was tie-barred to Senate Bills 343, 488, and 489.

A more detailed description of the bills (except Senate Bills 347 and 348) follows.

Senate Bills 343, 344, & 346 and House Bill 4509

Urban Homestead Program

Under the bills, a local governmental unit, by resolution, may operate, or authorize a nonprofit community organization or a housing commission to operate and administer an urban homestead program. In the resolution, the local governmental unit also must provide an appeals process to applicants, qualified buyers, purchasers, and lessees who are adversely affected by a decision of the administrator, local unit, housing commission, or resident organization. ("Administrator" means a local governmental unit or a nonprofit community organization under contract with a local unit to administer a homestead program. "Local governmental unit" means a county, city, village, or township. "Housing commission" means a housing commission or housing authority as defined under the Housing Cooperation Law, which defines "housing commission" as any housing commission created under Public Act 18 of the Extra Session of 1933. "Single-family housing" means "housing accommodations designed as a residence for not more than 1 family". "Multifamily public housing" means "housing accommodations designed as a residence for more than 1 family". "Vacant property" means surplus vacant residential property owned by the local unit.)

Qualified Buyer Criteria

Under the bills, an applicant (an individual and his or her spouse if the spouse intends to occupy the property with the individual) is eligible to enter into a homestead agreement as a qualified buyer if he or she meets all of the following criteria:

- -- The applicant is employed and has been employed for the immediately preceding one-year period or is otherwise able to meet the financial commitments.
- -- The applicant has not been sentenced or imprisoned within the immediately preceding one-year period for a felony; is not on probation or parole for a felony; and has not been sentenced, imprisoned, or placed on probation or parole within the immediately preceding five-year period for a controlled substance offense.
- -- The applicant has not been convicted of a violation or attempted violation for criminal sexual conduct.
- -- All school-age children of the applicant who will reside in the property attend school regularly. (A child with more than 10 unexcused absences per semester as determined by the local school or appropriate governing body is not considered to be attending school regularly.)
- -- The applicant has income below the median for the State as determined by the U.S. Department of Housing and Urban Development, for families with the same number of members as the applicant.
- -- The applicant is drug-free.
- -- The applicant agrees to file an affidavit each year certifying that he or she meets all of the

bills' criteria.

-- The applicant meets all other criteria as determined by the administrator or local unit.
-- The applicant intends to occupy the vacant property by constructing a home on the premises (under Senate Bill 346).

Conditions

The administrator, local unit, or housing commission may require substance abuse testing of an applicant as a condition of entering into a homestead agreement. If the applicant tests positive for substance abuse, then he or she must enter into a substance abuse treatment program, as determined by the administrator, local unit, or housing commission. The continuing substance abuse treatment and successful completion must be part of the agreement. The administrator, local unit, or housing commission may contract with and seek assistance from the local unit, the State, the Department of Community Health, or any other entity to implement this provision.

An applicant who has one or more school age children must provide verification of school attendance each semester.

In addition, the bills provide that an agreement is automatically terminated within 60 days after a qualified buyer is convicted of a felony during the term of the agreement.

As a condition of receiving ownership of the property, the bills require the qualified buyer to maintain and regularly fund an escrow account with the administrator, local unit, or resident organization for the payment of property taxes and insurance on the property.

Homestead Agreement

Senate Bill 343 allows a qualified buyer to apply to the administrator to rent certain property in the local unit. If the application is approved, the qualified buyer and the administrator must enter into a lease agreement for the premises. The administrator must determine the terms and conditions of the lease agreement. The administrator must charge at least 80% but not more than 100% of the fair market rental value for the premises. The administrator has the authority to determine rent based on factors such as income, number of dependents, and conditions of the property. The qualified buyer is responsible for all utilities and costs of improvements to the premises. If the qualified buyer is in substantial compliance with the lease for at least five years and continues to meet the criteria for a qualified buyer, and the premises substantially comply with all building and housing codes, the administrator must deed that property to the qualified buyer for $1.

Senate Bill 344 and House Bill 4509 provide that a qualified buyer may apply to the administrator or the resident organization to acquire single-family public housing or a public housing unit. If the application is approved, the qualified buyer and the administrator or organization must enter into a homestead agreement for the property. The administrator or organization must determine the terms and conditions of the agreement. The administrator or organization must transfer legal ownership of that public housing property to the qualified buyer for $1 if he or she is in substantial compliance with the agreement for at least five years, or has resided in the public housing property before the administrator or organization adopts the program, resides there for at least five years, meets the criteria in the agreement, continues to meet the criteria for a qualified buyer, and has otherwise substantially met his or her financial obligations with the commission or organization.

If the housing commission received Federal funds for which bonds or notes were issued, the commission or organization must transfer legal ownership to the qualified buyer within 60 days of payment of the pro rata share of the bonded debt on that specific property. The housing commission must obtain the appropriate releases from the holders of the bond or notes.

Senate Bill 346 requires the local unit to deed property to an applicant for $1 if he or she substantially meets the criteria for a qualified buyer and receives a commitment to finance construction on vacant property. The applicant must agree to deed the property back to the local unit if the home is not constructed or not in the process of construction within one year from the date of the transfer. The local unit may enforce this provision with the use of a deed restriction or other restriction in the chain of title.

Before placing vacant property into the program, the local unit first must offer the property to owners who occupy adjacent and contiguous property, and if they do not purchase it, the local unit must offer it to neighborhood resident organizations, other community groups, or the general public. The local unit must determine the sale price for any sale under this provision.

Loans

Senate Bill 343 provides that rental receipts must be used to make loans to qualified buyers in a local governmental unit for improvement, repair, or rehabilitation of property in the urban homestead program, and pay the costs of an audit; and as long as the yearly costs do not exceed 40% of the yearly rental receipts, may pay the costs associated with administering the provisions concerning the criteria for a qualified buyer. Loans must be made for a term

not to exceed 10 years and at a rate of interest not to exceed the qualified loan rate (the adjusted prime rate determined in the revenue Act minus one percentage point). The administrator must determine the terms and conditions of the loan agreement.

If the local governmental unit acts as the administrator under the bill, the rental receipts must be deposited in a separate fund within the local unit's general fund. If the local unit contracts with a nonprofit community organization to act as the administrator, the rental receipts must be deposited in a segregated escrow account in a financial institution located in Michigan. The administrator may solicit funds from any and all sources, both public and private, for deposit into the accounts and funds described above.

Senate Bill 344 and House Bill 4509 allow MSHDA to provide loans to qualified buyers who are required to pay the pro rata share of the bonded debt on the single-family public housing, or pay for their multifamily unit. The rate of interest on these loans must not exceed the qualified rate. The Authority must determine the terms and conditions of the loan agreement. Loans made by MSHDA may be prepaid or paid off at any time without penalty.

Under House Bill 4509, a resident organization may apply to MSHDA for grant funds for management training and counseling, which may be provided by nonprofit community organizations and similar organizations. Also, MSHDA may make mortgage loans to resident organizations that qualify to acquire multifamily public housing of up to 95% of the bonded indebtedness of the housing project. The organization must pay the remaining portion of the indebtedness from any legal source.

Housing Projects

Under House Bill 4509, if a resident organization contracts with a housing commission to manage a housing project, the commission must pay all management fees and operation subsidies that it receives for the housing project to the resident organization.

If a resident organization successfully has managed a housing project and each member of the organization meets the criteria for a qualified buyer, the commission must transfer legal ownership to the resident organization for $1. If the housing commission received Federal funds for which bonds or notes were issued, and are outstanding, the commission must transfer legal ownership to the organization within 60 days of payment of the bonded debt. The commission must obtain the appropriate releases from the holders of the bonds or notes. The organization must hold legal ownership of the housing project in the form of a cooperative housing corporation or a condominium association.

For five years after a qualified buyer takes ownership of a unit under House Bill 4509, the resident organization has a right of first refusal if the buyer wants to sell the unit. During the five-year period, the organization may repurchase the unit at the fair market price if the qualified buyer sells it. Also, during that period, the qualified buyer must not rent out or lease his or her unit or allow any other nonfamily member to reside in it.

Residents of a housing project who resided there before a resident organization took legal ownership may continue to reside in the premises under the same terms and conditions as when the property was owned by the commission. The Michigan State Housing Development Authority may request the Federal government to provide housing vouchers for residents who do not become owners.

Other Provisions

If a waiver of Federal law, rule, or policy is needed to implement Senate Bill 344 or House Bill 4509, the housing commission, MSHDA, and the resident organization may work together to obtain the appropriate waivers from the appropriate Federal authorities.

The powers of a local governmental unit prescribed in each bill are in addition to any other powers provided by law or charter.

At least every two years, the administrator, housing commission, nonprofit community organization, or local unit must hire an independent auditor to audit the books and accounts of the urban homestead program or resident organization. Upon completion, the audit report must be made available to the public.

Under Senate Bills 343 and 344, and House Bill 4509, a qualified buyer eligible for and participating in the urban homestead program must be allowed the opportunity to make up any late or delinquent rent due. The administrator must notify the individual of the arrearage and determine a payment schedule to make up past due rent.

House Bill 4489

Legislative Finding and Intent

The bill provides: "The legislature finds that there exists in this state a continuing need to strengthen and revitalize the economy of this state and its municipalities by encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes. Therefore, the powers granted in this act relating to the return of property for delinquent taxes constitute performance by this state or a political subdivision of this state of essential public purposes and functions."

The bill also provides that it is the intent of the Legislature that the provisions of the General Property Tax Act relating to the return, forfeiture, and foreclosure of property for delinquent taxes satisfy the minimum requirements of due process required under the State Constitution and the U.S. Constitution but that those provisions do not create new rights beyond those required. The failure of the State or a political subdivision to follow a requirement under the bill relating to the return, forfeiture, or foreclosure of property for delinquent taxes cannot be construed to create a claim or cause of action against the State or a political subdivision unless the minimum requirements of due process under the State or U.S. Constitution are violated.

Local Decisions

By December 1, 1999, a county board of commissioners by a resolution adopted at an open meeting, and with the written concurrence of the county treasurer and county executive, may elect to have the State foreclose tax delinquent property or certified abandoned property that is forfeited to the country under the bill. At any time during December 2004, the county board of commissioners, by a resolution adopted at an open meeting, may elect to have the State foreclose property that is forfeited to the county under the bill, or rescind its prior resolution by which it elected to have the State foreclose forfeited property. The bill specifies that the foreclosure of forfeited property by a county is voluntary and not an activity or service required of units of local government for purposes Article IX, Section 29 of the State Constitution (the Headlee amendment).

A county and a local unit may enter into an agreement for the consolidation of tax liens within that local unit. A local unit may not establish a delinquent tax revolving fund (as provided under the Act for counties).

Notwithstanding any charter provision to the contrary, the governing body of a local unit that collects delinquent taxes may establish for any property, by ordinance, procedures for the collection of delinquent taxes and the enforcement of tax liens, and the schedule for the forfeiture or foreclosure of delinquent tax liens. The procedures and schedule must conform to those established in the bill, except that taxes subject to a payment plan approved by the local treasurer as of July 1, 1999, may not be considered delinquent as of the following March 1 if payments are not delinquent under that payment plan.

Liens of the State

The bill specifies that the people of this State have a valid lien on property returned for delinquent taxes, with rights to enforce the lien as a preferred or first claim on the property. The right to enforce the lien is the prima facie right of this State and may not be set aside or annulled except in the manner and for the causes specified in the Act.

The bill also provides that all property offered at a tax sale held for taxes levied before January 1, 1999, that is sold or bid off to the State remains subject to a lien recorded under Part 201 (Environmental Remediation) of the Natural Resources and Environmental Protection Act (NREPA). In addition, the property remains subject to any lien recorded by the State before redemption, sale, or transfer of that property by the State. In either case, the lien must be extinguished on the sale or transfer of the property by the Department of Natural Resources or under the NREPA.

Forfeiture/Fees

The bill provides that on March 1 in each year, taxes levied in the immediately preceding year that remain unpaid must be returned as delinquent for collection. Property delinquent for taxes levied in the second year preceding the forfeiture or in a prior year must be forfeited to the county treasurer for the total of the unpaid taxes, interest, penalties, and fees for those years.

A county property tax administration fee of 4% and interest computed at a noncompounded rate of 1% per month or fraction of a month on the taxes that were originally returned as delinquent, computed from the March 1 that the taxes originally became delinquent, must be added to property returned as delinquent. A county property tax administration fee may not be less than $1.

On March 1 in each tax year, certified abandoned property and property that is tax delinquent for the immediately preceding 12 months or more is forfeited to the county treasurer for the total amount of those unpaid taxes, interest, fees, and penalties. If property is forfeited to a county treasurer, the county treasurer does not have a right to possession of the property until 21 days after a judgment of foreclosure is entered under the Act. The county treasurer must add a $175 fee as adjusted by the State Treasurer to each parcel of property for which delinquent taxes, interest, penalties, and fees remain unpaid. The adjusted fee must be adequate to meet the expenses of the foreclosing governmental units in conducting the title search required by the bill.

Within 45 days after property is forfeited, the county treasurer must record with the county register of deeds a certificate in a form determined by the State Treasurer for each parcel of forfeited property, specifying that the property has been forfeited and not redeemed and that absolute title to the property will vest in the county treasurer 21 days after a foreclosure judgment is entered. If the county has elected to have the State foreclose property, the county treasurer must immediately transmit a copy of each certificate to the State Treasurer. Within 30 days the county treasurer must transmit to the State Treasurer the $175 fees, which may be paid from the county delinquent tax revolving fund, and must be deposited in the Land Reutilization Fund.

On the October 1 immediately succeeding the date that unpaid taxes are returned to the county treasurer for forfeiture, foreclosure, and sale, or returned to the county treasurer as delinquent, the county treasurer must add a $15 fee as adjusted by the State Treasurer on each parcel of property for which the delinquent taxes, interest, penalties, and fees remain unpaid. The adjusted fee must be adequate to meet the expenses incurred by the county treasurers in providing notice by certified mail.

Notice of Delinquency

Under the bill, the county treasurer may publish in a newspaper published and circulated in the county the street address of property subject to forfeiture on the immediately succeeding March 1 for delinquent taxes, and the name of the person to whom a tax bill for tax delinquent property was last sent, and the name of the owner if different as shown on the current records of the county treasurer. If no newspaper is published in that county, publication must be made in a newspaper published and circulated in an adjoining county.

Any person with an unrecorded property interest or any other person who wishes at any time to receive notice of the return of delinquent taxes on a parcel of property may pay an annual fee of up to $5 by February 1 to the county treasurer and specify the parcel identification number, the address of the property, and the address to which the notice must be sent. Holders of undischarged mortgages wishing to receive notice of delinquent taxes on a parcel or parcels of property may provide a list of such parcels in a form prescribed by the county treasurer, specify the information for each parcel, and pay a fee of up to $1 per parcel. The county treasurer must notify the person or holders of undischarged mortgages if delinquent taxes are returned within that year.

Also, upon the request of a holder of a tax lien purchased under the Michigan Tax Lien and Collateralized Securities Act, and payment to the county treasurer of the actual costs incurred in complying with the request, the county treasurer must provide a list identifying the parcels of property for which a notice is required under the bill.

On the June 1 immediately following the March 1 that unpaid taxes are returned to the county treasurer as delinquent, the county treasurer must send notice, by first-class mail, to the person to whom a tax bill for property returned for delinquent taxes was last sent or to the person identified as the owner of such property, a person who wishes to receive notice, and a person to whom a tax certificate was issued, as shown on the treasurer's current records. The notice must include all of the following:

-- The date tax delinquent property will be forfeited to the county treasurer for the unpaid delinquent taxes, interest, penalties, and fees.
-- A statement that a person who holds a legal interest in the property may lose that interest as a result of the forfeiture and subsequent foreclosure proceeding.
-- A legal description or parcel number and street address of the property.
-- The person or persons to whom the notice is addressed.
-- The unpaid delinquent taxes, interest, penalties, and fees due on the property.
- A statement that absolute title to the property will vest in the foreclosing governmental unit unless the taxes, interest, penalties, and fees

are paid within 21 days after judgment is entered in the foreclosure proceeding.

-- A statement of the person's rights of redemption and notice that the rights of redemption will expire 21 days after the court enters an order foreclosing the property.

On the September 1 immediately following the March 1 that unpaid taxes are returned to the county treasurer as delinquent, the county treasurer must send a notice to the same persons, containing the information described above. This notice also must include a schedule of the additional fees that will accrue on the following October 1 if the unpaid taxes, interest, penalties, and fees are not paid.

On November 1 of each year, the county treasurer must prepare a list of all property subject to forfeiture for delinquent taxes on the immediately following March 1. The list must indicate for each parcel the total amount of delinquent taxes, interest, penalties, and fees, computed to the date of the forfeiture.

By December 1, the county treasurer must determine, based on the records contained in the local assessor's, local treasurer's, and county treasurer's offices for property subject to forfeiture on the previous March 1, the street address of the property and the name and address of the owners; the holder of any undischarged mortgage, tax certificate, or other legal interest; a subsequent purchaser under any land contract; and the holder of a tax lien purchased under the Michigan Tax Lien Sale and Collateralized Securities Act who requested notice.

Notice of Forfeiture

The bill provides that, by February 1 immediately succeeding the March 1 that unpaid taxes were returned to the county treasurer as delinquent, the county treasurer must send a notice by certified mail to the person to whom a tax bill for tax delinquent property was last sent and, if different, to the person identified as the owner and to those persons identified by the county treasurer. The notice of forfeiture must include the date the property will be forfeited to the county treasurer; a statement that a person who holds a legal interest in the property may lose that interest as a result of the forfeiture and subsequent foreclosure proceeding; a legal description or parcel number of the property and the street address, if possible; the person or persons to whom the notice is addressed; the unpaid delinquent taxes, interest, penalties, and fees due on the property; a schedule of the additional interest, penalties, and fees that will accrue on the immediately succeeding March 1; a statement that unless the taxes, interest, penalties, and fees are paid within 21 days after judgment is entered in the foreclosure proceeding, absolute title to the property will vest in the foreclosing governmental unit; and a statement of the person's rights of redemption and notice that those rights will expire 21 days after the court enters an order foreclosing the property.

The notice also must be mailed to the property by first-class mail addressed to "occupant" if a prior notice was not sent to the occupant of the property. A county treasurer may insert one or more additional notices in a newspaper of general circulation in that county if there is one. If no newspaper is published in that county, publication may be made in a newspaper published and circulated in an adjoining county.

Redemption

Under the bill, property forfeited to the county treasurer may be redeemed at any time before 21 days after a judgment foreclosing the property is entered upon payment to the county treasurer of all of the following: the total amount of unpaid delinquent taxes, interest, penalties, and fees for which the property was forfeited; additional interest at a noncompounded rate of 0.5% per month or fraction of a month, calculated from the March 1 preceding the forfeiture; and all recording fees and fees for service of process or notice.

If property is redeemed by a person with a legal interest, that person does not acquire a title or interest in the property greater than what the person would have had if the property had not been forfeited to the county treasurer, but the person redeeming, other than the owner, is entitled to a lien for the amount paid to redeem the property in addition to any other lien or interest the person may have. The lien must be recorded within 30 days with the register of deeds, and has the same priority as the existing lien, title, or interest.

If property is redeemed, the county treasurer must issue a redemption certificate in quadruplicate form provided by the Department of Treasury. The certificates must be delivered to the person making the redemption payment, filed in the county treasurer's office, recorded in the office of the county register of deeds, and immediately transmitted to the Department of Treasury. The county treasurer also must make a note of the redemption certificate in the tax record kept in his or her office, with the name of the person making the redemption payment, the date of the payment, and the amount paid. A certificate and entry of the certificate in the tax record are prima facie evidence of a redemption payment in the State courts.

Foreclosure Petition

Under the bill, by June 15 in each tax year, the foreclosing governmental unit must file a petition with the clerk of the circuit court listing the property forfeited and not redeemed to be foreclosed for the

total of the unpaid delinquent taxes, interest, penalties, and fees. The petition must include the address of each parcel of property set forth in the petition, if available. The petition must seek a judgment in favor of the foreclosing governmental unit for the forfeited unpaid delinquent taxes, interest, penalties, and fees listed against each parcel of property. The petition must request entry of a judgment vesting absolute title to each parcel of property in the foreclosing governmental unit, without right of redemption. Before the hearing on the petition, the county treasurer must file with the clerk of the circuit court proof of any notice, service, or publication required.

If property is redeemed after the foreclosure petition is filed, the foreclosing governmental unit must request that the circuit court remove that property from the petition before judgment foreclosing the property is entered.

The foreclosing governmental unit may withhold from the petition property whose title is held by minor heirs or persons who are incompetent or without means of support until a guardian is appointed to protect their rights and interests, or property whose title is held by a person undergoing substantial financial hardship. If a foreclosing governmental unit withholds property from the petition, a taxing unit's lien for taxes due or the foreclosing governmental unit's right to include the property in a subsequent petition for foreclosure is not prejudiced.

If a petition for foreclosure is filed, the clerk of the circuit court in which the petition is filed immediately must set the date, time, and place for a hearing, which must be held within 30 days before the March 1 immediately following the date the petition is filed.

Title Search/Notice of Hearings

Title Search. By May 1 immediately following the forfeiture of property to the county treasurer, the foreclosing governmental unit must conduct a title search to identify the owners of a property interest in the property who are entitled to notice of a show cause hearing and a foreclosure hearing. The foreclosing governmental unit may enter into a contract with one or more licensed title insurance companies or agents to perform the title search and other functions described below.

Mail. The foreclosing governmental unit or its authorized representative must determine the address reasonably calculated to apprise those owners of a property interest of the show cause hearing and the foreclosure hearing, and must send notice of the hearings by certified mail at least 30 days before the show cause hearing to those owners, to a person who requested notice, and to a person to whom a tax deed for tax delinquent property was issued. The failure of the foreclosing governmental unit to comply with any of these notice provisions will not invalidate any proceeding under the Act if the owner of a property interest or a person to whom a tax deed was issued is accorded the minimum due process required under the State Constitution and the U.S. Constitution.

Publication. If the foreclosing governmental unit or its authorized representative is unable to ascertain the address reasonably calculated to apprise the owners of a property interest entitled to notice, or is unable to serve the owner of a property interest, service must be made by publication. The notice must be published for three successive weeks, once each week, in a newspaper published and circulated in the county, or, if no paper is published in that county, in an adjoining county. Proof of publication must be recorded with the register of deeds in that county. The publication must be instead of service by mail.

Personal Visit. The foreclosing governmental unit or its authorized representative must make a personal visit to each parcel of property forfeited to the county treasurer to ascertain whether the property is occupied. If the property appears to be occupied, the foreclosing governmental unit or its authorized representative must attempt to serve personally upon a person occupying the property a copy of a notice of the show cause hearing and the foreclosure hearing. If a person occupying the property is personally served, the foreclosing unit or its representative must orally inform the occupant that the property will be foreclosed and the occupants will be required to vacate unless all forfeited unpaid delinquent taxes, interest, penalties, and fees are paid; of the time within which all forfeited unpaid delinquent taxes, interest, penalties, and fees must be paid; and of agencies or other resources that may be available to assist the owner to avoid the loss of the property. If the occupant appears to lack the ability to understand the advice given, the foreclosing governmental unit or its authorized representative must notify the Family Independence Agency or provide the occupant with the names and telephone number of the agencies that may be able to assist the occupant.

If the foreclosing unit or its representative cannot personally meet with the occupant, it must place the notice in a conspicuous manner on the property.

Proof of Service. The foreclosing governmental unit or its authorized representative must record the proof of service of the notice of the show cause hearing, the foreclosure hearing, and the personal visit to the property with the register of deeds in that county. If the foreclosing governmental unit entered into a contract with a licensed title insurance company or agent, it must provide that proof of service to the company or agency. Within 10 days after receiving

the proof of service, the company or agent must notify the foreclosing governmental unit in writing of any deficiency in service. If the foreclosing governmental unit is notified of any deficiency in service, the foreclosing unit must correct that deficiency and provide proof of that correction to the company or agent.

Owner of Property Interest. The owner of a property interest is entitled to notice of the show cause hearing and the foreclosure hearing if that owner's interest was identifiable by reference to any records or tax records in the office of the county register of deeds, the county treasurer, the local assessor, or the local treasurer, before the date the county treasurer records the certificate.

The owner of a property interest who has been properly served with a notice of the show cause hearing and the foreclosure hearing and who failed to redeem the property must not assert that notice was insufficient or inadequate on the grounds that some other owner of a property interest was not also served, or that the redemption period was extended in any way on the grounds that some other owner of a property interest was not also served.

Content of Notice. The notice must include all of the following:

- -- The date on which the property was forfeited.
- -- A statement that the person notified may lose his or her interest in the property as a result of the foreclosure proceeding.
- -- A legal description or parcel number and the street address of the property, if possible.
- -- All persons to whom the notice is addressed.
- -- The total taxes, interest, penalties, and fees due on the property.
- -- The date and time of the show cause hearing.
- -- The date and time of the hearing on the petition for foreclosure, and a statement that unless the forfeited unpaid delinquent taxes, interest, penalties, and fees are paid within 21 days after judgment is entered in the foreclosure proceeding, the title will vest absolutely in the foreclosing governmental unit.
- -- An explanation of the person's rights of redemption and notice that the rights will expire 21 days after judgment is entered.

Hearing/Judgment Foreclosing Property

Show Cause Hearing. If a petition for foreclosure is filed, the foreclosing governmental unit must schedule a hearing not later than seven days immediately before the date of the foreclosure hearing to show cause why absolute title to the forfeited property should not vest in the foreclosing governmental unit. The foreclosing governmental unit may hold combined or separate hearings for different owners or persons with a property interest.

The owner and any person with a property interest may appear at the hearing and redeem that property or show cause why absolute title to that property should not vest in the foreclosing governmental unit. If the owner or any person with a property interest prevails in the hearing, the foreclosing governmental unit must notify the county treasurer, who must correct the tax roll to reflect that determination.

Objections to Petition. A person claiming an interest in a parcel of property set forth in the petition for foreclosure may contest the validity or correctness of the unpaid delinquent taxes, interest, penalties, and fees for one or more of the following reasons: no law authorizes the tax; the person appointed to decide whether a tax must be levied under State law acted without jurisdiction or did not impose the tax in question; the property was exempt from the tax in question or the tax was not legally levied; the tax has been paid; the tax was assessed fraudulently; or the description of the property used in the assessment was so indefinite or erroneous that the forfeiture was void.

A person claiming an interest in a parcel of property set forth in the petition who wants to contest that petition must file written objections with the clerk of the circuit court and serve those objections on the foreclosing governmental unit.

Withholding Property. If the court determines that the owner of property subject to foreclosure is a minor heir, is incompetent, or is without means of support, the court may withhold that property from foreclosure for one year or may enter an order extending the redemption period as the court determines to be equitable. If the court withholds property from foreclosure, a taxing unit's lien for taxes due is not prejudiced and that property must be included in the immediately succeeding year's tax foreclosure proceeding.

Judgment. The circuit court must enter judgment on a petition for foreclosure within 10 days after the March 1 immediately following the date the petition is filed for uncontested cases, or 10 days after the conclusion of the hearing for contested cases. All redemption rights to the property expire 21 days after the court enters a judgment foreclosing the property as requested in the petition.

The court's judgment must specify all of the following:

- -- The legal description and, if known, the street address of the property foreclosed and the unpaid delinquent taxes, interest, penalties, and fees due on each parcel of property.
- -- That fee simple title to the property will vest absolutely in the foreclosing governmental

unit, without any further rights of redemption, if all forfeited delinquent taxes, interest, penalties, and fees are not paid within 21 days after judgment is entered.

-- That all liens against the property, except future installments of special assessments and liens recorded by the State or the foreclosing governmental unit under the NREPA, are extinguished, if all forfeited delinquent taxes, interest, penalties, and fees are not paid within 21 days after judgment is entered.

-- That the foreclosing governmental unit has good and marketable fee simple title to the property, if all forfeited delinquent taxes, etc. are not paid within 21 days after entry of judgment.

-- That all existing recorded and unrecorded interests in that property are extinguished, except a visible or recorded easement or right-of-way, private deed restrictions, restrictions imposed under the NREPA, or other governmental interests, if all forfeited taxes, etc., are not paid within 21 days.

-- A finding that those entitled to notice and an opportunity to be heard have been provided that notice and opportunity.

Fee simple title to property set forth in a petition for foreclosure on which delinquent taxes, interest, penalties, and fees are not paid within 21 days after judgment is entered will vest absolutely in the foreclosing governmental unit, and the governmental unit will have absolute title to the property. The title is not subject to any recorded or unrecorded lien and may not be stayed or held invalid except as provided below.

The foreclosing governmental unit must record either the judgment or a notice of judgment in the office of the register of deeds for that county.

Appeal. The foreclosing governmental unit or a person claiming to have a property interest in foreclosed property may appeal the circuit court's judgment to the Court of Appeals. An appeal is limited to the record of the proceedings in the circuit court and may not be de novo. The judgment must be stayed until the Court of Appeals has reversed, modified, or affirmed the judgment. To appeal the judgment, a person must pay the amount determined to be due to the county treasurer under the judgment within 21 days after it is entered, together with a notice of appeal. If the judgment is affirmed on appeal, the amount determined to be due must be refunded to the person who appealed the judgment. If the judgment is reversed or modified on appeal, the county treasurer must refund the amount determined to be due to the person who appealed the judgment, if any, and retain the balance according to the order of the Court of Appeals.

Monetary Damages. If a judgment for foreclosure is entered and all existing recorded and unrecorded interests in a parcel of property are extinguished, the owner of any extinguished recorded or unrecorded interest in that property who claims that he or she did not receive any notice may not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover monetary damages as provided in the bill.

The Court of Claims has original and exclusive jurisdiction in any action to recover monetary damages. An action to recover monetary damages may not be brought more than two years after a judgment for foreclosure is entered. Any recoverable monetary damages must be determined as of the date a judgment for foreclosure is entered and must not exceed the fair market value of the property on that date.

Property Sales and/or Transfer

Minimum Bid. The following provisions apply to the purchase of property by the State, a city, village, or township, or a county before an auction sale.

The bill provides that, by the first Tuesday in July, or the first Tuesday in September if an auction sale is not held, immediately following the entry of judgment vesting absolute title to tax delinquent property in the foreclosing governmental unit, the State is granted the right of first refusal to purchase property at the greater of the minimum bid or its fair market value by paying that amount to the foreclosing governmental unit if the foreclosing governmental unit is not the State. If the State elects not to purchase the property, a city, village, or township may purchase for a public purpose, any property located within that city, village, or township and subject to sale, by paying the minimum bid to the foreclosing governmental unit. If a city, village, or township does not purchase that property, the county in which the property is located may purchase it by paying the minimum bid to the foreclosing governmental unit. If a city, village, or township purchases the property, the foreclosing governmental unit must convey it to the purchasing city, village, or township within 30 days. If property purchased by a city, village, township, or county is subsequently sold for an amount in excess of the minimum bid and all costs incurred relating to demolition, renovation, improvements, or infrastructure development, the excess amount must be returned to the delinquent tax property sales proceeds account for the year, or to the Land Reutilization Fund if the State is the foreclosing governmental unit.

Upon the request of the foreclosing governmental unit, a city, village, or township, or county that purchased property under these provisions must provide to the foreclosing governmental unit

information regarding any subsequent sale or transfer of the property.

(The bill defines "minimum bid" as the minimum amount established by the foreclosing governmental unit for which property may be sold. The minimum bid must include all delinquent taxes, interest, penalties, and fees due on the property, but not any taxes and any interest, penalties, or fees on the taxes, levied by the city, village, or township that purchases the property; and the expenses of administering the sale, including all preparations.)

Auction Sale. Subject to the preceding provisions, beginning on the third Tuesday in July immediately after the entry of judgment vesting absolute title to tax delinquent property in the foreclosing governmental unit, the foreclosing unit or its authorized representative may hold one or more property sales at which property foreclosed by the judgment is to be sold by auction sale. Notice of the time and location of the sale must be published at least 30 days before the sale in a newspaper published and circulated in that county, or if there is no newspaper published in that county, publication must be made in a newspaper in an adjoining county. The sale or sales must be completed within 15 days. The property must be sold to the person bidding the highest amount above the minimum bid. The foreclosing governmental unit may sell parcels individually or may offer two or more parcels for sale as a group. The minimum bid for a group of parcels must equal the sum of the minimum bid for each parcel included in the group. The foreclosing governmental unit may require full payment by cash, certified check, or money order at the close of each day's bidding. Within 30 days after the sale, the foreclosing governmental unit must convey the property by warranty deed to the person bidding the highest amount over the minimum bid. The deed must vest fee simple title to the property in the person. If the State is the foreclosing governmental unit, the Department of Natural Resources (DNR) must conduct the sale of property on behalf of the State.

After an auction sale has been held, and by the first Tuesday in September immediately following that sale, a city, village, or township may purchase any property not previously sold by paying the minimum bid to the foreclosing governmental unit. If a city, village, or township does not purchase that property, the county in which the property is located may purchase it by paying the minimum bid to the foreclosing governmental unit. If the property is purchased by a city, village, township, or county, the foreclosing governmental unit must convey the property to that local unit within 30 days.

Beginning on the third Tuesday in September immediately following the auction sale, all property not previously sold must be reoffered for sale, subject to the requirements for an auction sale. Beginning on the third Tuesday in November immediately following the property sale held in September, all property not previously sold must be reoffered for sale again subject to the same requirements, except that the minimum bid is not required.

Transfer of Property. On December 1 immediately after the date of the property sale held in November, a list of all property not previously sold by the foreclosing governmental unit must be transferred to the clerk of the city, village, or township where the property is located. The city, village, or township may object in writing to the transfer of one or more parcels of property set forth on that list. On December 30, all property not previously sold by the foreclosing governmental unit, except those parcels to which the city, village, or township has objected, must be transferred to the city, village, or township in which the property is located. The city, village, or township may make the property available under the Urban Homestead Act (Senate Bill 343) or for any other lawful purpose.

If property not previously sold is not transferred to the city, village, or township, the foreclosing governmental unit must retain possession of that property.

Sale Proceeds. A foreclosing governmental unit must deposit the proceeds from the sale of tax delinquent property into a restricted account. The foreclosing unit must direct investment of the account and credit to it interest and earnings from account investments. The foreclosing unit may use proceeds in the account only for the following purposes in the following order of priority:

-- The delinquent tax revolving fund must be reimbursed for all taxes, interest, and fees on all of the property whether or not it was sold.
-- All costs of the sale of property for the year must be paid.
-- Any costs of the foreclosure proceedings for the year, including costs of mailing, publication, personal service, and outside contractors, must be paid.
-- Any costs for the sale of property or foreclosure proceedings for any prior year that have not been paid or reimbursed from that prior year's property sales proceeds must be paid.
-- Any costs incurred by the foreclosing governmental unit in maintaining foreclosed property before the sale, including costs of any environmental remediation, must be paid.
-- If the foreclosing unit is the State, any remaining balance must be transferred to the Land Reutilization Fund.

Joint Sale. Two or more county treasurers of adjacent counties may elect to hold a joint sale of property. If two or more county treasurers elect to do so, property may be sold at a location outside of the county in which it is located. The sale may be conducted by any county treasurer participating in the joint sale.

Land Reutilization Fund

The bill creates the Land Reutilization Fund within the Department of Treasury. The State Treasurer may receive money or other assets from any source for deposit into the Fund. The State Treasurer must direct the investment of the Fund, and credit to it all interest and earnings from investments. Money in the Fund at the close of the fiscal year must remain in the Fund and not lapse to the General Fund.

The Department may spend money from the Fund for one or more of the following purposes: contracts with title insurance companies; costs of determining addresses, service of notices, and recording fees; defense of title actions; and other costs incurred in administering the foreclosure and disposition of forfeited property.

County Tax Liens

Under the Act, a person who holds a tax lien purchased from a city under the Michigan Tax Lien Sale and Collateralized Securities Act, also may purchase and enforce a county tax lien, as prescribed in the General Property Tax Act. Under the bill, these provisions apply for taxes levied before January 1, 1997. For taxes levied after December 31, 1996, the provisions described below apply.

At any time before the redemption period has expired, a person who holds a tax lien from a city under the Michigan Tax Lien Sale and Collateralized Securities Act, also may purchase a county tax lien. The county or the State must transfer the tax lien to the purchaser upon receiving an amount equal to the delinquent taxes, charges, assessments, penalties, interest, and fees represented by the county tax lien.

A person who purchased a county tax lien under the bill may enforce that county tax lien and collect the amounts secured by it, together with any interest and penalties that accrued before or after the purchase, notwithstanding any charter provisions to the contrary. A county tax lien sold under the bill is a preferred or first claim upon the property subject to the lien in the same manner as if the city held the tax lien. A county tax lien purchaser may not take any action to enforce or collect a county tax lien that is not authorized under the bill.

If a county tax lien is purchased, the portion of the tax lien that represents delinquent taxes, interest, penalties, and fees is subject to interest, penalties, and fees as provided in the bill. A person who purchases a county tax lien may retain any delinquent taxes, interest, penalties, and fees collected for delinquent taxes, interest, penalties, and fees subject to the county tax lien purchased. The fees must not be levied more than once on each parcel in each tax year.

A pledge of tax liens or earnings, revenues, other money, or assets from enforcement of county tax liens purchased under the bill is valid and binding from the time the pledge is made without any filing, recording, or other requirement of notice. The tax liens, earnings, revenues, other money, or assets pledged by a person who purchased a tax lien are immediately subject to the lien of the pledge without physical delivery or further act. The lien of the pledge of tax liens, earnings, revenues, other money, or assets is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the purchaser whether or not those parties have notice of the lien of the pledge. Any instrument by which a pledge is created is not required to be recorded.

Department of Natural Resources

Under the Act, the DNR Director, with the approval of the Natural Resources Commission, may withhold from sale any land suitable for State forests, State parks, State game refuges, public hunting, or recreational grounds. The bill eliminates the required approval of the Natural Resources Commission, and allows the Director to withhold from sale any property the Director deems suitable for these purposes.

The Act permits the DNR to sell property that is not withheld from sale and not held by a local tax collecting unit. The bill specifies that a deed issued under these provisions remains subject to any restrictions approved by the State, or the foreclosing governmental unit, and recorded with the register of deeds under the NREPA.

The bill also deletes provisions allowing a local tax collecting unit or a county to apply to the DNR requesting the conveyance of certified special residential property for which the redemption period has expired.

Other Provisions

Administrative Hearing. Under Section 131e of the Act, the redemption period on property deeded to the State must be extended until the owners of a recorded interest have been notified of a hearing before the Department of Treasury. A hearing must be held to allow the property owners to show cause why the tax sale and the deed to the State should be canceled. The property then may be redeemed, for

the amounts specified in this section, up to 30 days after the hearing. Under the bill, the Department of Treasury may hold combined or separate show cause hearings for different owners of a recorded property interest.

The bill provides that the owner of a recorded property interest who has been properly served with a notice of the hearing, and who fails to redeem the property must not assert that notice was insufficient or inadequate on the grounds that some other owner of a property interest was not also served, or that the redemption period was extended on the grounds that some other owner of a property interest was not also served.

The bill specifies that Section 131e, as amended by the bill, is retroactive and is effective for all property whose title vested in the State after October 25, 1976.

Forms. By one year after the bill's effective date, the State Treasurer must prescribe the forms to be used in the administration of the collection of taxes for notice and proof of service, affidavit of publication, and the judgment of foreclosure. In prescribing the forms, the State Treasurer must actively solicit recommendations from the county treasurers and other interested parties.

Fee Adjustment/Reports. By March 1 in each year, but not after December 31, 2002, the State Treasurer must adjust the following fees added to each parcel of tax delinquent property: the $15 fee to provide notice by certified mail, and the $175 fee to provide for a title search.

By December 31 in each year, each county treasurer in the State must submit a report to the State Treasurer detailing the expenses incurred in the administration of the delinquent tax collection process and the adequacy of the fees in relation to those expenses.

By December 1, 2003, a committee of the State's county treasurers selected by the Michigan Association of County Treasurers must submit a report on the delinquent tax collection process to the House Local Government and Urban Policy Committee and the Senate Local, Urban and State Affairs Committee or their successors. The report must contain the potential successes and areas for improvement of the process, and the adequacy of the fees established under the Act.

County Agent. Under the Act, a county may establish a delinquent tax revolving fund, and borrow money or issue revolving fund notes. If provided by separate resolution of the county board of commissioners for any year in which a county determines to borrow, a certain percentage of the interest collected must be paid from the surplus in the fund to the county treasurer for services as agent for the county. Under the bill, a county treasurer elected or appointed to office after bill's effective date is not eligible for this payment unless he or she held office on the bill's effective date and has not vacated the office after that date.

Repealed Sections

Effective Repeals. As of its effective date, the bill repeals sections providing for the identification of parcels as certified special residential property, and the sale of those parcels for unpaid taxes (Sec. 55a and 70b).

Repeals Effective December 31, 2003. Sections of the Act that do the following will be repealed as of December 31, 2003:

- Require the State Treasurer to petition for the sale of tax delinquent land (Sec. 61).
- Require notice of a tax sale to persons with a recorded interest in tax delinquent land (Sec. 61a).
- Require lists and street addresses of tax delinquent land (Section 61b).
- Prescribe the court order for a hearing on a tax sale (Sec. 62).
- Require publication of the order and petition (Sec. 63, 64, and 66).
- Prescribe the decree for a sale, and the vesting of title in the State (Sec. 67).
- Provide for conveyance of land to the State due to nonredemption (Sec. 67a).
- Provide that land sold for unpaid taxes remains subject to liens of government (Sec. 67b).
- Provide for the taxation of land not included in a decree for sale (Sec. 68).
- Allow a court to withhold from a tax sale land belonging to infants, minor heirs, or insane people (Sec. 69).
- Provide for annual tax sales of tax delinquent land (Sec. 70).
- Postpone the 1975 annual tax sale (Sec. 70a).
- Prescribe the purchaser's certificate (Sec. 71).
- Provide for execution of a tax deed to the purchaser after the redemption period expires (Sec. 72).
- Provide that a tax sale or deed may not be set aside more than five years after the purchase (Sec. 73).
- Provide for acquiring title after five years of adverse possession (Sec. 73a).
- Provide for tax deeds issued before September 28, 1907 (Sec. 73b).
- Require notice of the redemption period to persons with a recorded interest in property sold at a tax sale (Sec. 73c).

Repeals Effective December 31, 2006. Sections of the Act that do the following will be repealed as of December 31, 2006:

- -- Allow the redemption of land sold, and require the issuance of redemption certificates (Sec. 74).
- -- Provide for the recording of the annulment of redemption certificates (Sec. 75).
- -- Specify grounds for holding a tax illegal in proceedings before a sale (Sec. 76).
- -- Describe competent evidence in an action by a person claiming land that was purchased for unpaid taxes (Sec. 77).
- -- Provide for the issuance of a replacement deed (Sec. 83).
- -- Allow the purchase of land bid to the State after a tax sale (Sec. 84).
- -- Provide for the enforcement of remaining unpaid taxes (Sec. 85).
- -- Provide for ejectment actions against the State (Sec. 86).
- -- Provide for the rejection of taxes by the Auditor General, and the charging back of rejected taxes to a county (Sec. 95-97).
- -- Require the Auditor General to withhold land from a tax sale due to certain errors (Sec. 98).
- -- Provide for applications for a certificate of error or cancellation of a sale, and withholding conveyance to the State (Sec. 98a and 98b).
- -- Specify that a tax sale may not be invalidated due to nonprejudicial errors (Sec. 99).
- -- Allow the Auditor General to execute a deed in the name of a deceased person (Sec. 101).
- -- Require county treasurers to make a return of delinquent taxes to the DNR (Sec. 102).
- -- Require the DNR to give the Auditor General a description of land on which taxes have been paid (Sec. 103).
- -- Entitle the holder of a certificate of sale to an injunction to restrain waste (Sec. 115).
- -- Provide for the conveyance to a city or village of abandoned land that was acquired by the State before June 15, 1933, and provide that this land is not homestead land (Sec. 127b and 131b).
- -- Allow the DNR Director to withhold from a sale land suitable for State forests, parks, game refuges, or recreation areas (Sec. 131).
- -- Require the DNR to convey land to the owner after title has vested in the State (Sec. 131a).
- -- Allow the redemption of land following the vesting of title in the State; allow a municipality to withhold land from sale; and allow a municipality to redeem land (Sec. 131c).
- -- Allow the DNR to contract with real estate brokers to manage tax-reverted land (Sec. 131d).
- -- Require an administrative hearing, extend the redemption period until a show cause hearing, and allow redemption after a hearing (Sec. 131e).
- -- Require a certificate as to tax liens for recording conveyances (Sec. 135).
- -- Provide for the treatment of land returned as delinquent before the passage of Public Act 200 of 1891 (Sec. 138).
- -- Require sheriffs to give notice of the sale of land and right to redeem to certain persons (Sec. 140).
- -- Prescribe proof of notice on an improved residential parcel (Sec. 140a).
- -- Specify persons entitled to a release and quit claim of interest in property acquired under a tax deed (Sec. 141).
- -- Prohibit the purchaser under a tax sale or State bid from taking possession for six months after notice is given (Sec. 142).
- -- Require the recording of notice and proof of service if land is not redeemed within six months (Sec. 142a).
- -- Prohibit a challenge to the validity of a tax sale by a person who was given notice and failed to redeem (Sec. 143).
- -- Require the Auditor General to be a party to an action to set aside a tax sale (Sec. 144).
- -- Prescribe remedies for waste and removal of property from tax delinquent land (Sec. 156 and 157).

Senate Bill 488

Declaration

A local unit may, by adopting a resolution at an open meeting, make a declaration of accelerated forfeiture of abandoned property if it contains substantially the language specified in the bill. The resolution must state that the governing body of the local unit determines that parcels of abandoned tax delinquent property exist; the property contributes to crime, blight, and decay within the local unit; certification of the property will result in accelerated forfeiture and foreclosure under the General Property Tax Act and return abandoned property to productive use, thereby reducing crime, blight, and decay within the local unit; and the local unit is notifying residents and owners of property in the local unit that abandoned tax delinquent property will be identified and inspected and may be certified as certified abandoned property and subject to accelerated forfeiture and foreclosure.

("Abandoned property" means tax delinquent property containing a structure that is vacant or dilapidated, is open to entrance or trespass, and has been determined to be abandoned under the bill.)

Procedure

If a local unit makes a declaration of accelerated forfeiture of abandoned property before October 1 of any tax year, the local unit may identify property within

that local unit as abandoned property if all of the following procedures are complied with:

- -- Before February 1, the local unit inspects the property and determines that it is abandoned property.
- -- The local unit posts a notice on the property at the time of inspection that if taxes levied on the property are returned as delinquent, the property will be subject to accelerated forfeiture and foreclosure, and fees under the General Property Tax Act will be imposed, unless an affidavit claiming the property is not abandoned is filed.
- -- The local unit sends a copy of the notice by first-class mail to the owner of the property or to the taxpayer of record.
- -- Taxes levied on the property are returned as delinquent on March 1 to the treasurer of the county in which the property is located under the General Property Tax Act.

If the local unit determines that the property is occupied by an owner or a person with a legal interest in the property, the local unit may not certify the property as certified abandoned property.

Certified Abandoned Property

An owner or a person with a legal interest in the property may file an affidavit claiming the property is not abandoned; the affidavit may be filed with the local unit before taxes are returned as delinquent or with the county treasurer after taxes are returned as delinquent. If an affidavit is filed before the how cause hearing required by the Property Tax Act, the property is not forfeited on the immediately preceding March 1 and must be forfeited on the immediately succeeding March 1 if all the delinquent taxes, interest, penalties, and fees have not been paid.

If a local unit complies with the bill's procedures and an owner or a person with a legal interest has not responded to the notice, the local unit may certify the property as certified abandoned property.

Senate Bill 489

Quiet Title Procedure

A person who holds a tax deed issued on abandoned property may quiet title to that property in the circuit court of the county in which the abandoned property is located, by taking the actions described below.

Title Search. The tax deed holder or his or her authorized agent must conduct a title search on the abandoned property.

Notice by Mail or Publication. After conducting the title search, the tax deed holder or authorized agent must send notice by certified mail to the owner and to all persons with a legal interest in each parcel of abandoned property subject to accelerated foreclosure, as determined by the records in the office of the register of deeds and in records maintained by the county treasurer and the State Treasurer. If, for any reason, the notice cannot be delivered to the last recorded address of the owner or persons with a legal interest, the notice must be published once each week for four successive weeks, in a newspaper published and circulated in the county where the parcel is located, and if no newspaper is published in that county, publication must be made in a newspaper in an adjoining county.

Building Inspection. At the request of the tax deed holder, the building inspector of the municipality in which the property is located must inspect the property and execute an affidavit attesting that the abandoned property is vacant, dilapidated, or open to entrance or trespass. The cost of the inspection must be paid by the tax deed holder and must be included in the amount necessary to redeem the property.

Foreclosure Notice. The tax deed holder or authorized agent must post a notice on the abandoned property at least 90 days before a foreclosure action. The notice must include at least all of the following:

-- The legal description, parcel number, and, if known, the street address of the abandoned property.
-- A statement of the total amount that must be paid to the county treasurer to redeem the abandoned property within 90 days of receipt of the notice, including fees to cover the cost of a title search, publication, and inspection by the municipal building inspector.
-- A statement of the person's rights of redemption and notice that those rights will expire 90 days after the person has received notice by mail or publication.
-- A statement that unless the taxes, interest, penalties, and fees are paid before the 90-day redemption period expires and a foreclosure judgment is entered, title to the abandoned property will vest absolutely in the petitioning tax deed holder.

Quiet Title Action. If the owner or a person with a legal interest does not redeem the abandoned property by payment to the county treasurer within 90 days of service of the notice, the tax deed holder may bring an action in the circuit court of the county in which the abandoned property is located and petition the court to issue a judgment to quiet title in favor of the tax deed holder. The tax deed holder must provide all of the following to the court:

-- An affidavit from the building inspector of the municipality.
-- A title search on the property that identifies all owners and persons with a legal interest as determined by the records maintained in the office of the register of deeds, the county treasurer, and the State Treasurer.
-- Proofs of service required under the bill. If a tax deed holder fails to serve notice on one or more persons with a legal interest, service on any other person is not invalidated and the redemption period for any other person is not stayed or extended.
-- An affidavit from the county treasurer certifying to the lack of payment within the 90-day redemption period.

Judgment

If the circuit court enters a judgment in favor of the petitioning tax deed holder, the court must foreclose the property as requested in the foreclosure petition. The judgment must specify the following:

-- The legal description and, if known, the street address and parcel number of the abandoned property foreclosed.
-- That fee simple title to the property is vested absolutely in the petitioning tax deed holder without any further rights of redemption.
-- That, as of the date of the judgment, all delinquent property taxes, demolition liens, and all other municipal liens of any kind, except future installments of special assessments, are extinguished.
-- That all existing recorded and unrecorded interests in that property are extinguished, except a visible or recorded easement or right-of-way.
-- That the petitioning tax deed holder has good and marketable fee simple title to the property.

Monetary Damages

If a foreclosure judgment is entered and all existing recorded or unrecorded interests in a parcel of property are extinguished, the owner of any extinguished recorded or unrecorded interest in that property may not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover monetary damages. An action to recover monetary damages may not be brought more than two years after a judgment is entered. Monetary damages must be determined as of the date a judgment is entered.

Abandoned Property

Property must be considered abandoned if all of the conditions described below are satisfied.

Within 30 days before the commencement of foreclosure proceedings, the tax deed holder mails by certified mail, to the last known address of the owner and all persons with a legal interest in the property, a notice that the property is abandoned and that the tax deed holder intends to foreclose it.

Before commencement of foreclosure proceedings, the tax deed holder executes and records, in the office of register of deeds in the county in which the abandoned property is located, an affidavit stating that the tax deed holder has mailed to the owner and all persons with a legal interest a notice of abandonment and intention to foreclose and that the owner or any person with a legal interest has not responded; and that the tax deed holder or authorized agent has made a personal inspection of the abandoned property and the inspection did not reveal that the owner or any person with a legal interest is presently occupying or intends to occupy the property.

The tax deed holder mails by certified mail, a copy of the affidavit to the owner or any person with a legal interest in the property before commencing foreclosure proceedings.

The owner or any person with a legal interest does not, before judgment is entered, give a written affidavit to the tax deed holder and record a duplicate original in the office of the register of deeds stating

that the owner or person with a legal interest is occupying or intends to occupy the property.

Senate Bill 507

Declaration of Emergency Backlog

A local unit may obtain clear title to tax reverted property whose title has vested in the local unit before January 1, 2000, if a declaration of emergency backlog is made as provided in the bill.

A local unit may make a declaration that an emergency backlog of tax reverted property exists within that local unit if the legislative body of the local unit, at an open meeting, approves a resolution stating that the existing inventory of tax reverted property within all or a portion of the local unit is too large and of uncertain title, that the property impairs the local unit's ability to market that property by conventional means, and that the property contributes to the spread of neighborhood blight and deterioration.

("Tax reverted property" means property whose title has vested in a local unit of government pursuant to the General Property Tax Act as a result of the nonpayment of delinquent taxes and nonredemption within the statutory period.)

Title Search

If a declaration is made, the local unit must conduct a title search to identify the owners of a recorded property interest in any specific parcel of tax reverted property within the area identified in the resolution approved by the local unit. The foreclosing governmental unit may enter into a contract with one or more licensed title insurance companies or agents to perform the title search. If the post office address of a person with a recorded property interest cannot be determined from the title search, the local unit must review the records of the treasurer and assessor for the local unit, and the qualified voter file to ascertain the person's address.

Notice

After a title search is completed and at least 30 days before a quiet title action is commenced, the local unit must send notice by certified mail to all persons with a recorded interest in any parcel of tax reverted property. A notice also must be mailed to the property by first-class mail and addressed to "occupant". If the local unit is unable to ascertain the address of a person with a recorded property interest, or if notice by certified mail is refused, service of the notice must be made by publication. The notice must be published for three successive weeks, once each week, in a newspaper published and circulated in the county in which the property is located, or, if no paper is published in that county, in an adjoining county. Proof of publication must be recorded with the register of deeds in the county where the property is located. The publication is service on the owners of a recorded property interest identified by the title insurance company whose whereabouts cannot be reasonably ascertained or who refused service.

Affidavit

An authorized officer of the local unit must file an affidavit attesting to his or her compliance with the title search and notice requirements in the office of the register of deeds in the county where the property is located. The notice must include the following:

- -- The date the property was deeded to the local unit.
- -- The date of the court hearing (described below).
- -- A statement that a person notified may lose his or her interest in the property as a result of a circuit court judgment quieting title to the property.
- -- A legal description or parcel number and the street address of the property, if available.
- -- The person or persons to whom the notice is addressed.
- -- The total of taxes, interest, penalties, and fees due as of the expiration of the redemption period under Section 131e of the General Property Tax Act.
- -- A statement that unless all taxes, interest, fees, and penalties are paid before a judgment quieting title is entered, absolute title to the property will vest in the local unit without any further redemption rights.

Quiet Title Action

After notice is provided to all persons with a recorded interest in each parcel of tax reverted property, the local unit may bring a quiet title action in the circuit court for the county in which the property is located. A quiet title action must determine title for all parcels of tax reverted property set forth on a separate attachment to the complaint and incorporated into the complaint by reference.

If a local unit brings a quiet title action, a person claiming a recorded interest in the tax reverted property may contest the validity or correctness of the unpaid delinquent taxes, interest, penalties, and fees for any of the following reasons: no law authorizes the tax; the person appointed to decide whether a tax must be levied under State law acted without jurisdiction or did not impose the tax in question; the person or property assessed was exempt from the tax in question or was not legally assessed; the tax has been paid; or the tax was assessed fraudulently. The owner of a recorded interest in the tax reverted

property who desires to contest the quiet title action must file written objections with the clerk of the circuit court and serve those objections on the local unit.

If the court determines that the owner of the property is incompetent or is without means of support, the court may withhold that property from the judgment quieting title or may enter an order extending the redemption period as the court determines to be equitable.

If the court enters a judgment in favor of the local unit, the court must quiet title to the property in the local unit. The court's judgment must specify all of the following:

-- The legal description and, if known, the street address of the tax reverted property and the unpaid delinquent taxes, interest, penalties, and fees due on each parcel of tax reverted property.
-- That fee simple title to the property is vested absolutely in the local unit, without any further rights of redemption.
-- That all liens against the property of any kind are extinguished, except a visible or recorded easement or right-of-way.
-- That the local unit has good and marketable fee simple title to the property.
-- That any rights or interest claimed by any person to the property are extinguished.

Fee simple title to property on which delinquent taxes, interest, penalties, and fees are not paid before judgment is entered must vest absolutely in the local unit upon entry of judgment, and the local unit must have absolute title to the property. The title is not subject to any recorded or unrecorded lien and cannot be stayed or held invalid except as provided below.

Appeal

The local unit or a person claiming an interest in the tax reverted property may appeal the circuit court's judgment to the Court of Appeals. The judgment must be stayed until the Court of Appeals has reversed, modified, or affirmed the judgment. To appeal the judgment, a person must pay the amount determined to be due to the local unit under the judgment within 21 days after it is entered, together with a notice of appeal. If the judgment is affirmed on appeal, the amount determined to be due must be refunded to the person who appealed the judgment. If the judgment is reversed or modified on appeal, the local unit must refund the amount determined to be due to the person who appealed the judgment, if any, in accordance with the order of the Court of Appeals.

Rights of Redemption

After a local unit makes a declaration that an emergency backlog of tax reverted property exists, rights of redemption to tax reverted property, if any, are not transferable and a subsequent transferee is not entitled to notice and has no rights of redemption under the bill.

If the title search identifies any person with a recorded interest in tax reverted property who was not provided notice of tax foreclosure proceedings under the General Property Tax Act, that person has no rights of redemption under that Act and has only the rights of redemption provided under the bill.

MCL 125.2701 - 125.2709 (S.B. 343)
125.2761 - 125.2770 (S.B. 344)
125.2741 - 125.2748 (S.B. 346)
125.694b (S.B. 347)
125.1422 (S.B. 348)
211.961 - 211.266 (S.B. 488)
211.79 et. al (S.B. 489)
211.971 - 211.976 (S.B. 507)
211.57 et. al (H.B. 4489)
125.2721 - 125.2734 (H.B. 4509)

BACKGROUND

The following is a very simplified overview of the delinquent property tax process that existed before the bills' amendments (and that continues to apply for taxes levied before 1999).

Property taxes are collected by local units of government (cities and townships), which retain their local share and forward the nonlocal portions to other units of government (e.g., the State, counties, and school districts). Unpaid portions of the tax are "returned" to the counties. Counties act as the collection agent on behalf of the State, and reimburse local units for the revenue lost due to delinquency. (Exceptions apply, however, to Detroit and Kalamazoo, which retain local tax delinquencies for local collection.)

Taxes are due in December and unpaid taxes become officially delinquent on the following March 1. After 26 months, tax delinquent property is subject to a county's annual tax lien sale, at which buyers may purchase the right to become lienholders. (This period is shortened for "certified special residential property" under a program available within certain counties. Reportedly, the program has never been used.) If a tax lien is purchased at the annual sale, the property owner may redeem the property by paying the delinquent tax, interest at the rate of 1.25% per month, and administrative fees. If the owner does not redeem the property within one year, the lienholder is sent a tax deed, which is valid for five years. The lienholder then may perfect the lien by filing proof of the tax deed with the county sheriff, who serves notice on all persons with a recorded interest in the property. If no action is taken after notice has been served, the lienholder is issued a deed. If the lienholder does not perfect the lien, it reverts to the State.

If a tax lien is not purchased at the county tax sale, the lien is "bid off" to the State. The lien remains available for sale or redemption until April 20 of the following year. If the property is not redeemed while the State holds the lien, the Department of Treasury must hold an administrative hearing at which people with a recorded property interest may show cause why the property should not revert to State ownership. (In reference to a Michigan Supreme Court case, this is commonly called a *Dow* hearing, although *Dow* also required notice to holders of significant, though unrecorded, property interests.) If no compelling evidence is presented at the hearing, the State takes title after at least 30 days. Upon transfer of title to the State, the DNR performs an assessment and decides whether to retain the property for the State, return it to the local government, or sell it to the public.

Throughout this process, the property owner has various rights to redeem the property by paying the delinquent taxes plus increasing amounts of interest, fees, and penalties.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The urban homestead bills (Senate Bills 343, 344, 346, 347, and 348, and House Bill 4509) will promote stability in Michigan cities by giving individuals a stake and sense of pride in their communities. Reportedly, Michigan is the first state in the nation to implement an urban homesteading program on a statewide basis. Encouraging people to take over public housing units they now rent, rehabilitate abandoned buildings, and construct a home on vacant land, and requiring them to remain drug- and crime-free, holds the promise of both expanded homeownership and responsible behavior. Homeownership benefits include a healthy thriving neighborhood, family equity-building, economic mobility, personal responsibility, and community involvement. It is an investment because it provides a basis for social and economic advancement, and a step toward economic independence. Homeownership also promotes neighborhood stability and increases community pride since those who own homes are apt to take care of their neighborhoods and unlikely to put up with crime and drugs.

Supporting Argument

According to the Hudson Institute, the urban homestead bills will result in considerable net savings to taxpayers by eliminating the need for costly demolitions and other expenses. An article in the *Detroit News* (2-19-99) reported that Detroit officials recently estimated the city to have 39,000 abandoned homes, including 6,224 homes scheduled for demolition. Under the bills, participation in the urban homesteading program is strictly voluntary for all local units of government. No municipality is required to take any action that it considers to be too expensive.

The homesteading programs also may increase the tax base of participating local units, since abandoned housing and vacant land produce little property tax revenue.

Supporting Argument

The tax reversion bills (Senate Bills 488, 489, and 507 and House Bill 4489) will shorten, streamline, and clarify the process to bring tax delinquent property, especially abandoned property, back into productive use. Under the existing process, it can take over five years before the State makes a final disposition of tax delinquent property. During this time, the owner has multiple opportunities to redeem the property, and once title does finally vest in the State, the property often is unmarketable because title insurers will not write policies against it. In addition, except in regard to certified special residential property, the tax reversion process makes no distinction between different types of property.

The length and complexity of the current process contribute to urban blight because property is not noticed until taxes are delinquent; then, the property has to move through multiple administrative steps at various levels of government before a local unit can receive the property. By that time most buildings and fixtures have deteriorated and become barely salvageable and the title is worth little to the local unit. The bills shorten the tax reversion process while offering more protection to property owners and all persons with an interest in the property, by providing for sufficient notice, title searches, and ample time for redemption.

In addition, the bills will encourage the reclamation of damaged urban neighborhoods and preserve existing communities by allowing cities that establish urban homestead programs, or that have private groups with homestead programs, to use tax delinquent property to preserve neighborhoods and reduce crime through urban homesteading. According to an article in the *Detroit News* (9-28-98), last year the city had 50,000 parcels of tax delinquent property. The biggest obstacle to reuse of that property was the complex process by which a city gains title to tax delinquent property. In addition to creating a simplified process for all tax delinquent property, the bills contain an accelerated forfeiture process for abandoned property. By reforming the tax reversion process, the bills will return tax reverted property to productive use and enable urban homesteaders to buy their own homes before the property becomes unusable.

Supporting Argument
The current process does not produce clear title to tax reverted properties. Title companies indicate that 65% of tax reverted property lacks marketable title. Accumulated tax deeds for multiple tax years cloud title and lien buyers are often unwilling to quiet title and take possession of delinquent property. The bills will give new owners a clear and marketable title to delinquent property so they can finance new construction or renovation.

Supporting Argument
The tax reversion bills will be cost-effective. According to the Chief of Tax Administration for Oakland County, under current law, if a local unit returns a total of $1,000 in delinquent 1999 taxes to a county treasurer on March 1, 2000, it may cost the owner up to $2,137.50 to redeem the property from a lienholder. Under the bills, the maximum cost to redeem the property is almost $400 less. In addition, by replacing tax lien sales where lien buyers bid down and purchase only the right to collect delinquent taxes and fees, with an auction land sale where tax reverted land is sold to the maximum bidder for clear title, the bills will benefit taxpayers as well as enhance the market value of the land sold.

Supporting Argument
Since the current process does not establish clear title to tax reverted property, many Michigan cities have accumulated large inventories of property that is difficult to market or otherwise return to productive use. Under Senate Bill 507, a special temporary process will provide local units with the means necessary to a quiet title to tax reverted property if an emergency backlog exists.

Opposing Argument
There are some concerns that members of the public may be unable to succeed in homesteading with the current degree of infrastructure decay and rising construction costs. Some organizations that have participated in local urban homestead programs in the past believe that the programs failed because they were not reality-based. Buyers cannot afford the required tax payments and cannot obtain loans to make the necessary improvements. An article in the *Detroit Free Press* (6-10-98) reported that under affordable housing programs operating in Detroit, such as Nuisance Abatement and Repair to Own, only a tiny fraction of the people who applied successfully turned a vacant house into a home because participants could not afford to make repairs that cost up to 10 times the home's value.

Response: The bills provide several avenues to obtain loans through rental receipts and MSHDA for improvement, repair, or rehabilitation of property in the homestead program.

Opposing Argument
Eligibility criteria for the homesteading programs should provide sufficient flexibility to deal with unique circumstances in individual cases. For example, it is unclear if a lease agreement will be terminated if an occupant has made all payments and abided by all the requirements, but fails to meet an eligibility requirement (such as employment) in the final year of the lease. If the occupants make good-faith efforts, flexible repayment opportunities or compensation for those efforts should be addressed.

Response: The bills provide the administrator, resident organization, or local unit with the discretion to decide if a particular occupant is in substantial compliance with the homestead agreement. In addition, a qualified buyer must be allowed the opportunity to make up any late or delinquent rent due. The administrator must notify the individual of the arrearage and determine a payment schedule to make up past due rent.

Legislative Analyst: N. Nagata

FISCAL IMPACT

Senate Bill 343

The bill allows local units of government to administer or to contract with a nonprofit community organization to administer an urban homestead program. Administrative costs, which will include possibly drug testing and background checks for criminal records, will be incurred and rent will be collected.

Senate Bill 344

Local units that participate in an urban homesteading program will incur administrative costs and receive rent.

Senate Bill 346

Local units that participate in an urban homesteading program for vacant land will incur administrative costs and receive rent.

Senate Bill 347

The bill will have no fiscal impact on State or local government.

Senate Bill 348

The fiscal impact of Senate Bill 348 will depend on the fiscal impact of Senate Bills 343, 344, and 346, and House Bill 4509.

Senate Bills 488 & 489

The bills will have no fiscal impact on State or local government.

Senate Bill 507

Data are not available to determine the fiscal impact.

House Bill 4489

The bill will accelerate the collection of delinquent property taxes and establish fees to cover administrative costs.

House Bill 4509

This bill requires MSHDA to request housing vouchers from the Federal government for residents who do not become owners. This might result in the administration of a separate voucher system for individuals residing in these units.

Local units that participate in an urban homesteading program will incur administrative costs and receive rent.

Fiscal Analyst: M. Tyszkiewicz
R. Ross

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EXHIBIT E

House
Legislative
Analysis
Section

Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

PROPERTY TAX DELINQUENCY AND REVERSION SYSTEM

House Bill 4489 as enrolled
Public Act 123 of 1999
Sponsor: Rep. Patricia Birkholz

Senate Bill 488 as enrolled
Public Act 132 of 1999
Sponsor: Sen. Glen Steil

Senate Bill 489 as enrolled
Public Act 133 of 1999
Sponsor: Sen. Gary Peters

Senate Bill 507 as enrolled
Public Act 134 of 1999
Sponsor: Sen. Bill Schuette

House Committee: Local Government and Urban Policy

Senate Committee: Economic Development, International Trade and Regulatory Affairs

Second Analysis (7-23-99)

THE APPARENT PROBLEM:

Increasingly, economic development policy has focused on matters of redevelopment, and it has been the experience of developers and land use planners, especially those intent upon rebuilding American cities, that property is far easier to develop than it is to redevelop.

According to the Citizens Research Council, in its report entitled "Delinquent Property Taxes as an Impediment to Development in Michigan" issued in April 1999, two barriers to redevelopment loom especially high as urban pioneers seek a renaissance of reinvestment and resettlement in our cities: environmental contamination, and "tax delinquent and reverted properties which are subject to lengthy and sometimes interminable stretches of time before they are restored to productive status." The report points out that "at its barest essence, the debate over the delinquent property tax process is one of property rights vs. a community's ability to return properties to the tax rolls." The report calls for some degree of reform.

In the legislative session of 1893, more than a century ago, most of the laws now governing the assessment, administration, and collection of property taxes in Michigan were created. One vestige of Public Act 206 of 1893, also known as the General Property Tax Act, is the procedure to compel payment from property owners who become delinquent in property taxes.

Currently the tax delinquent property reversion process takes about six years to complete. It was designed to give property owners ample time and opportunity to redeem their property by paying the back taxes. For a brief overview of the process, see *BACKGROUND INFORMATION*, below.

As the Citizen Research Council points out in its report, the lengthy process poses several public policy problems: the system is unfair to those who pay their taxes on time; the lack of tax revenue thwarts local government operations; the tax collection process is labor intensive and time-consuming; tax delinquent properties (what are called "upside down properties" when tax arrearages exceed appraised value) cause urban blight; and, it hamstrings land acquisition and redevelopment projects.

Some have argued that an improved tax delinquency and reversion system is required to facilitate a speedier return of tax delinquent properties to tax-current status. Instead of six years, they have proposed three, and an even speedier one-time two-year process for already abandoned structures. Further, they have argued that the ultimate objective of the new system is to strike the proper balance between owners' property rights and the redevelopment imperative facing local units, particularly those with flat or declining property values. To these ends, legislation has been proposed in both the House and in the Senate to re-design the system.

THE CONTENT OF THE BILLS:

The delinquent tax and property reversion system reform legislation consists of four bills: House Bill 4489, Senate Bill 488, Senate Bill 489, and Senate Bill 507. The bills are summarized below.

House Bill 4489

The bill would amend the General Property Tax Act (MCL 211.57 et al) to provide that for those taxes levied after December 31, 1998, tax delinquent property would be subject to forfeiture, foreclosure, and sale over a three-year period. Under current law, the process takes about six years. The bill would reform the tax reversion process, and lodge primary responsibility for its administration with foreclosing governmental units. (Under the bill, "foreclosing governmental unit" would be defined to mean a county treasurer, or the state if the county had elected to have the state foreclose property that is forfeited to a county treasurer.)

More specifically, the bill would enable county treasurers to cancel tax sales, beginning April 30, 2000; require that a property description and the amount of unpaid taxes on each property be included in the county tax record; require compilation of a list of all tax-delinquent properties by the county treasurer, and the option of publishing the names of all tax delinquent property owners in the local newspaper; and, require that ample notice of tax delinquency, forfeiture, and foreclosure be given in several separate mailings to all those known to have an interest in the property. Further, the bill would require that the county treasurer assess a $15 fee for each parcel having unpaid taxes, and a $175 fee for each parcel that is forfeited after 12 or more months, and it would allow counties the option of having the state collect and return delinquent taxes to the county. The bill would allow counties to establish Delinquent Tax Revolving Funds; establish a Land Reutilization Fund in the Department of Treasury; and both alter and clarify property acquisition procedures in the Department of Natural Resources. Finally, the bill would repeal two sections of the General Property Tax Act on the date the bill is given immediate effect. Further, it would repeal 20 sections of the General Property Tax Act on December 31, 2001, and an additional 37 sections on December 31, 2004. A more detailed explanation of the bill's provisions follows.

Hardship. Under the bill, if a claim was made before February 15 for the credit provided by the Income Tax Act of 1967, a declaration of hardship that would enable waivers of certain interest and fees added to delinquent taxes that are returned would be extended to hemiplegics, and would be retained for senior citizens, paraplegics, quadriplegics, permanently disabled people, blind people, and eligible servicemen, veterans, and widows.

County Tax Sales. Not sooner than April 30, 2000 and April 30, 2001, the county treasurer could cancel the tax sale scheduled to take place on the first Tuesday in May 2000 and the first Tuesday in May 2001, if there are no outstanding bonds or notes issued by a county with respect to the delinquent taxes for which the sale is being conducted.

If a county treasurer cancels the year 2000 tax sale in May 2000, the taxes that were levied between December 31, 1996 and before January 1, 1998 that are delinquent would be returned to the county treasurer for forfeiture, foreclosure, and sale. A county property tax administration fee of four percent and interest computed at a noncompounded rate of one percent per month or fraction of a month on the taxes that were originally returned as delinquent, computed from March 1 when they originally became

delinquent, would be added to the delinquent taxes. A county property tax administration fee would not be less than $1.

If a county treasurer cancels the year 2001 tax sale in May 2001, taxes that were levied between December 31, 1997 and before January 1, 1999 that are delinquent would be treated in the same manner. For taxes levied after December 31, 1998, property returned for delinquent taxes would be subject to forfeiture, foreclosure, and sale. Further, the people of the state would have a valid lien on property that is returned for delinquent taxes, with rights to enforce the lien as a preferred or first claim on the property. The right to enforce the lien would be the prima facie right of the state and would not be set aside or annulled except in the manner and for the causes specified in the act.

Tax Record and Property Description. The bill would require that the tax record for each property include the amount of unpaid taxes; any penalties, interest, or charges due on the delinquent taxes; a description of the property; parts of description of property upon which taxes are paid before sale that are withheld from sale; the amount paid on taxes before sale; and, special orders made by the court relating to a parcel of property or any tax.

Environmental Contamination Liens. Notwithstanding other contrary provisions of law, all property offered at a tax sale that is sold or bid off to the state would remain subject to a lien recorded under the Natural Resources and Environmental Protection Act. In addition to this lien, property offered at a tax sale would remain subject to any lien recorded by the state prior to the redemption, sale, or transfer of the property by the state. These liens would be extinguished on the sale or transfer of the property under the Natural Resources and Environmental Protection Act.

Essential Public Purpose. The bill would set forth an essential public purpose. It would state that the legislature finds that there exists a continuing need to strengthen and revitalize the economy of the state and its municipalities by encouraging the effective and expeditious return to productive use of property returned for delinquent taxes. It also would specify that it is the legislature's intent that the provisions of the act relating to the return, forfeiture, and foreclosure of property for delinquent taxes satisfy the minimum requirements of due process required under the Michigan and U.S. Constitutions.

State Collection Option Every Five Years. Not later than December 1, 1999, a county board of commissioners could elect by resolution with the written concurrence of the county treasurer and county executive (if any), to have the state foreclose property forfeiting to the county treasurer. At any time during December 2004, the county board could, in an open meeting and with the concurrence of the treasurer and executive, do either of the following: a) elect to have the state foreclose property that is forfeited to the county treasurer; or b) rescind its prior resolution by which it elected to have the state foreclose property.

Delinquent Tax Collections Voluntary. The bill specifies that the collection by a county of taxes returned as delinquent would be voluntary and would not be an activity or service required of units of local government under the Michigan Constitution.

County and Local Government Agreements. A county could enter into an agreement with a local governmental unit within that county for the collection of property taxes, or for the enforcement and consolidation of tax liens within the local governmental unit. A local government unit would be prohibited from establishing a tax revolving fund in this instance.

Forfeiture, Foreclosure and Sale. The bill would provide that for taxes levied after December 31, 1998, all property returned for delinquent taxes, and upon which taxes interest, penalties, and fees remain unpaid after the property is returned as delinquent to the county treasurers of the state, would be subject to forfeiture, foreclosure, and sale for the enforcement and collection of the delinquent taxes.

County Property Tax Administration Fee. Under the bill, a county property tax administration fee of four percent and interest computed at a noncompounded rate of one percent per month or fraction of a month on the taxes that were originally returned as delinquent, would have to be assessed on property returned as delinquent. A county property tax administration fee could not be less than $1.

$5 Annual Notice Fees. Any person with an unrecorded property interest or any other person who wishes at any time to receive notice of delinquent taxes, could pay a $5 annual notice fee by February 1 to the county treasurer and specify the parcel identification number, the address of the property, and the address to which the notice would be sent. Holders of any undischarged mortgages wishing to

receive notice of the return of delinquent taxes on a parcel or parcels could provide a list of the parcels and pay an annual fee not to exceed $1 per parcel. Then the county treasurers would notify those who have paid the fee if delinquent taxes on property or properties are returned.

Michigan Tax Lien Sale and Collateralized Securities. Upon the request of a holder of a tax lien purchased under the Michigan Tax Lien Sale and Collateralized Securities Act, Public Act 379 of 1998, and payment to the county treasurer of the actual costs incurred in complying with that request, the county treasurer would be required to provide a list identifying the parcels of property for which a notice is required under the act. The list could be in a computer generated form, or other form. Notwithstanding any charter provision to the contrary, the governing body of a local governmental unit that collects delinquent taxes could establish for any property, by ordinance, procedures for the collection of delinquent taxes and the enforcement of tax liens and the schedule for the forfeiture or foreclosure of delinquent tax liens. The procedures and schedule established by ordinance would have to conform at a minimum to the procedures and schedule established under the bill. However, those taxes subject to a payment plan approved by the treasurer of the local governmental unit as of July 1, 1999 would not be considered delinquent as of the following March 1, if payments were not delinquent under the payment plan.

County Tax Liens. For taxes levied after December 31, 1996, at any time before the redemption period has expired, a person who holds a tax lien from a city under the Michigan Tax Lien Sale and Collateralized Securities Act could also purchase a county tax lien. (A "county tax lien" would be defined to have two meanings, depending on its application to current law or the proposed legislation. The first meaning applicable to current law would be: an interest in or encumbrance upon property for taxes levied before January 1, 1997, and charges, assessments, penalties, interest, or fees on those taxes that are returned as delinquent to a county treasurer or, after being returned as delinquent and bid off to the state. Its second meaning, as applied to new provisions that are proposed, would be: an interest in or encumbrance upon property for taxes levied after December 31, 1996, and charges, assessments, penalties, interest, or fees that are returned as delinquent to a county treasurer.)

A county tax lien that was purchased would have to be transferred by the county or by the state to the purchaser upon receipt of an amount equal to the delinquent taxes, charges, assessments, penalties, interest, and fees represented by the county tax lien. However, this would only apply to county tax liens on property for which the purchaser holds a tax lien from a city. A purchaser of a county tax lien could enforce that lien and collect the amount secured by the lien, together with any interest and penalties that accrued before or after the purchase, only in the manner provided under the act, notwithstanding any charter provisions to the contrary. A county tax lien that was sold would be a preferred or first claim upon the property subject to the lien in the same manner as if the city held the tax lien. A county lien purchaser would be prohibited from taking any action to enforce or collect a county tax lien that was not authorized under the act. For taxes levied after December 31, 1996, if a county tax lien was purchased, the portion of the lien that represents delinquent taxes, interest, penalties, and fees would be subject to interest, penalties, and fees. A person who purchases a county tax lien could retain any delinquent taxes, interest, penalties, and fees collected. The fees levied could not be levied more than one time on each parcel in each tax year.

For taxes levied after December 31, 1996, a pledge of tax liens or earnings, revenues, other money, or assets from enforcement of county tax liens purchased would be valid and binding from the time the pledge was made without any filing, recording, or other requirement of notice. The tax liens, earnings, revenue, other money, or assets pledged by a purchaser would be immediately subject to the lien of the pledge without physical delivery or further act. The lien of the pledge of tax liens, earnings, revenues, other money or assets would be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the purchaser, whether or not the parties had notice of the lien of the pledge. Any instrument by which a pledge was created would not be required to be recorded.

First and Second Notices of Delinquency. Under the bill, on the June 1 immediately succeeding the date that unpaid taxes were returned to the county treasurer for forfeiture, foreclosure, and sale, or returned as delinquent, the county treasurer would have to send a first notice, by first-class mail address correction requested, to the person identified as the owner of the

property, to a person entitled to notice, and to a person to whom a tax certificate for property returned for delinquent taxes was issued. On September 1, a second delinquent notice would be mailed.

The notices would be required to include all of the following: a) the date property on which unpaid taxes were returned as delinquent would be forfeited to the county treasurer for the unpaid delinquent taxes, interest, penalties, and fees; b) a statement that a person who holds legal interest in the property may lose that interest as a result of the forfeiture and subsequent foreclosure proceeding; c) a legal description or parcel number of the property and the street address of the property, if possible; d) the person or persons to whom the notice is addressed; e) the total taxes, interest, penalties, and fees due on the property; f) a statement that unless the taxes, interest, penalties, and fees are paid before the date of the foreclosure proceeding, absolute title to the property will vest in the foreclosing governmental unit; and, g) a statement of the person's rights of redemption and notice that the rights of redemption will expire if the court enters an order foreclosing the property.

$15 Fee. The bill also provides that, on the October 1 following the March 1 that unpaid taxes were returned to the county treasurer for forfeiture, foreclosure or sale, or returned as delinquent, the county treasurer would have to add a $15 fee on each parcel for which delinquent taxes, interest, penalties, and fees remain unpaid. Further, the bill stipulates that the fee established must cover expenses.

List of Property Subject to Forfeiture. The bill provides that on November 1 of each year, the county treasurer would have to prepare a list of all property subject to forfeiture for delinquent taxes on the immediately succeeding March 1. The list would have to include all property on which delinquent taxes, interest, penalties, and fees were unpaid on the November 1 immediately succeeding the date that taxes levied on the property were returned for forfeiture, foreclosure and sale. The list would have to indicate for each parcel the total amount of delinquent taxes for all years, interest, penalties, and fees, computed to the date of the foreclosure.

By December 1, the county treasurer would have to determine, to the extent possible, all of the following based on the records contained in the offices of the county treasurer, local assessor, and local treasurer: the street address of the property; the name and address of the owners, the holder of any undischarged mortgage or other legal interest; a subsequent purchaser under any land contract; and, any person entitled to notice.

Third Notice of Forfeiture with Published Addresses. Under the bill, not later than February 1 immediately succeeding the March 1 that unpaid taxes were returned to the county treasurer for forfeiture, foreclosure, and sale, or as delinquent, the county treasurer would have to send the third notice, by certified mail return receipt requested, to the person to whom a tax bill for property returned for delinquent taxes was last sent, and if different, to the person identified as the owner of such property as shown on the current records.

This notice, like the first and second notices, would have to include all of the following: a) the date property on which unpaid taxes were returned as delinquent would be forfeited to the county treasurer for the unpaid delinquent taxes, interest, penalties, and fees; b) a statement that a person who holds legal interest in the property may lose that interest as a result of the forfeiture and subsequent foreclosure proceeding; c) a legal description or parcel number of the property and the street address of the property, if possible; d) the person or persons to whom the notice is addressed; e) the total unpaid taxes, interest, penalties, and fees due on the property; f) a schedule of the additional interest, penalties, and fees that will accrue on the immediately succeeding March 1 if the unpaid delinquent taxes, interest, penalties, and fees due are not paid; g) a statement that unless the taxes, interest, penalties, and fees are paid before the date of the foreclosure proceeding, absolute title to the property will vest in the foreclosing governmental unit; and, h) a statement of the person's rights of redemption and notice that the rights of redemption will expire if the court enters an order foreclosing the property.

The bill would require that this notice also be mailed to the property by first-class mail, addressed to "Occupant", if the notice was not sent to the occupant by certified mail.

Newspaper Notices. Under the bill, a county treasurer could insert one or more additional notices in a newspaper published and circulated in the county in which the property is located, if there is one. If no newspaper is published in that county, publication could be made in a newspaper published in an adjoining county. The county treasurer could publish the street address of the property subject to forfeiture,

and the name of the person to whom a tax bill for property returned for delinquent taxes was last sent, or the name of the person identified as the owner of the property with delinquent taxes as shown on the current records of the county treasurer in a newspaper published and circulated in the county in which the property is located, if there is one, or in an adjoining county's newspaper if there is not.

$175 Fee on Forfeited Property Whose Taxes are Delinquent 12 Months. On March 1 of each tax year, certified abandoned property and property that is delinquent for taxes, interest, penalties, and fees for the immediately preceding 12 months or more, would be forfeited to the county treasurer for the total amount of unpaid taxes, fees, and penalties. If property were forfeited, the county treasurer would not have the right to possession until a judgment of foreclosure was entered. Further, if property were forfeited, the country treasurer would be required to add a $175 fee to each parcel of property.

Recording Forfeited Property. Not more than 45 days after property is forfeited, the county treasurer would be required to record with the county register of deeds a certificate (in a form determined by the state) for each parcel, specifying the property had been forfeited and not redeemed, and that absolute title would vest in the county treasurer upon entry of a foreclosure judgment. If the county had elected to have the state foreclose property, the country treasurer would be required to immediately transmit to the state treasurer a copy of each certificate recorded, and upon collection and within 30 days, also to transmit the $175 fee added to each parcel. The fees may be paid from the county's Delinquent Tax Revolving Fund and they would be deposited in the state's Land Reutilization Fund.

Redemption. Property forfeited to the county treasurer could be redeemed at any time before a judgment foreclosing the property was entered upon payment to the county treasurer of all of the following: the total amount of unpaid delinquent taxes, interest, penalties, and fees for which the property was forfeited; an additional interest computed at a noncompounded rate of one-half percent per month or fraction of a month on the taxes that were originally returned as delinquent, computed from the March 1 preceding the forfeiture; and, all recording fees and all fees for service of process or notice.

Redemption Liens and Certificates. If property were redeemed by a person with a legal interest, the person redeeming would not acquire a title or interest in the property greater than the former owner would have had if the property had not been forfeited to the county treasurer, but the person redeeming would be entitled to a lien for the amount paid to redeem the property in addition to any other lien or interest the person may have. That lien would be recorded within 30 days with the register of deeds, and the lien acquired would have the same priority as the existing lien, title, or interest.

Further, if property were redeemed, the county treasurer would be required to issue a redemption certificate (in quadruplicate in a form prescribed by the Department of Treasury). One copy of the certificate would be delivered to the person making the redemption payment, one filed in the office of the county treasurer, one recorded in the office of the county register of deeds, and one immediately transmitted to the Department of Treasury. The county treasurer also would be required to make a note of the redemption certificate in the tax record kept in his or her office, with the name of the person making the redemption payment, the date of the payment, and the amount paid. A certificate and the entry of the certificate in the tax record by the county treasurer would be prima facie evidence of a redemption payment in the courts of the state.

Foreclosure Petition and Notice. Not later than June 15 in each tax year, the foreclosing governmental unit would have to file a petition with the clerk of the circuit court listing the property forfeited and not redeemed for the total of the forfeited unpaid delinquent taxes, interest, penalties, and fees. The petition would have to include the address of each parcel of property set forth in the petition, if available to the foreclosing governmental unit. The petition would have to request that a judgment be entered vesting absolute title to each parcel of property in the foreclosing governmental unit, without right of redemption. Before the hearing on the petition, the foreclosing governmental unit would have to file with the clerk of the circuit court proof of any notice, service, or publication required.

If property were redeemed after the foreclosure petition was filed, the foreclosing governmental unit would be required to request that the circuit court remove that property from the petition before judgment foreclosing the property was entered.

The foreclosing governmental unit could withhold from the petition property whose title was held by minor heirs or persons who were incompetent or without means of support until a guardian was appointed to protect their rights and interests. If a county treasurer withheld property from the petition, a taxing unit's lien for taxes due or the county treasurer's right to include the property in a subsequent petition for foreclosure would not be prejudiced.

Foreclosure Hearing. If a petition for foreclosure were filed, the clerk of the circuit court in which the petition was filed immediately would have to set the date, time, and place for a hearing, which would have to be held within 30 days before the March 1 immediately succeeding the date the petition was filed.

Title Searches. Under the bill, not later than May 1 immediately succeeding the forfeiture of property, the foreclosing governmental unit would be required to conduct a title search to identify owners with property interests who are entitled to notice. The foreclosing governmental unit could enter into a contract with one or more state licensed title insurance companies or agents to perform the title searches to identify the owners and to perform other functions.

Show Cause Hearing and Notice. The foreclosing governmental unit or its authorized representative would be required to determine the address reasonably calculated to apprise owners of a show cause hearing, or the foreclosure hearing, and to send notice of those hearings to the owners by certified mail, return receipt requested, not less than 30 days before the hearing. The failure of the foreclosing governmental unit to comply with any provision of this section would not invalidate any proceeding if the owner of a recorded property interest was accorded the minimum due process required under the Michigan Constitution.

Personal Visits to Determine Occupancy & FIA Referral. Under the bill, the foreclosing governmental unit (or an authorized representative) would be required to make a personal visit to each parcel of forfeited property to ascertain whether or not the property was occupied. If the property appeared to be occupied, the foreclosing governmental unit would be required to do all of the following:

a) attempt to personally serve a person occupying the property a copy of a notice of the show cause hearing;

b) if a person occupying the property is personally served, to orally inform the occupant 1) that the property will be foreclosed and the occupants will be required to vacate unless all forfeited unpaid delinquent taxes, interest, penalties, and fees were paid, 2) of the time within which the fees would have to be paid, and 3) of agencies or other resources that may be available to assist the owner to avoid loss of the property;

c) if the occupant appears to lack the ability to understand the advice given, to notify the Family Independence Agency (FIA) or to provide the occupant with the names and telephone number of the agencies that may be able to assist the occupant; and

d) if unable to personally serve notice, to place a notice written in plain English in a conspicuous manner on the property, stating that the property will be foreclosed unless forfeited unpaid delinquent taxes, penalties, interest, and fees are paid; containing the time within which they must be paid; and, the names, addresses, and telephone numbers of agencies or other resources that may be available to assist the occupant to avoid loss of the property.

If the state were the foreclosing governmental unit, the Department of Natural Resources would be required to perform the personal visit to each parcel on behalf of the state.

The foreclosing governmental unit would be required to record the proof of service of the notice of the show cause hearing, the foreclosure hearing, and the personal visit to the property with the register of deeds, and also to the title insurance company under contract in the county. If the foreclosing governmental unit entered into a contract with a title insurance company or licensed agent, the foreclosing governmental unit would be required to provide the proof of service to the title insurance company or agent. Within 10 days after receiving proof of service, the title insurance company would be required to notify the foreclosing governmental unit in writing of any deficiency in service, and the foreclosing governmental unit be required to correct that deficiency and provide proof of the correction. If these efforts to serve notice were not successful because the whereabouts of owners could not be reasonably ascertained, then the county treasurer would be required to serve notice by publication. Under the bill, the notice would be published for three
successive weeks, once each week, in a newspaper

published in the county where the property is located, or an adjoining county if there is no newspaper in the county where the property is located. Proof of publication, by affidavit of the printer or publisher of the newspaper, would be recorded with the register of deeds.

Under the bill, the owner of a recorded property interest would be entitled to notice if that owner's interest were identifiable by reference to records in the offices of the register of deeds, county treasurer, local assessor, or local treasurer.

Under this section of the bill, the notice required would include: a) the date on which the property was forfeited to the county treasurer; b) a statement that a person notified may lose his or her interest in the property as a result of the foreclosure; c) a legal description or parcel number of the property and the street address of the property, if possible; d) all persons to whom the notice is addressed; e) the total taxes, interest, penalties, and fees due on the property; f) the date and time of the show cause hearing; g) the date and time of the hearing on the foreclosure petition and a statement that unless the taxes, interest, penalties, and fees are paid before judgment is entered in the foreclosure proceeding, absolute title to the property will vest in the foreclosing governmental unit; and h) a statement of the person's rights of redemption and notice that the rights of redemption will expire if the court enters a judgment foreclosing the property.

Show Cause Hearing and Notice. Under the bill, if a petition for foreclosure were filed, the foreclosing governmental unit would be required to schedule a hearing not later than December 31 immediately preceding the date of the foreclosure hearing to show cause why absolute title to the property forfeited should not vest in the foreclosing governmental unit. The foreclosing governmental unit could hold combined or separate hearings for different owners or persons with a property interest in the property forfeited to the county treasurer. The owner and any person with a recorded property interest could appear at the hearing and redeem the property, or show cause why absolute title should not vest in the foreclosing governmental unit. If the owner prevailed, the foreclosing governmental unit would be required to correct the tax roll to reflect the determination.

If a petition of foreclosure were filed, the foreclosing governmental unit would be required to file with the circuit court clerk, before the date of the hearing, proof of any notice, service, or publication.

Contesting the Foreclosure Petition. A person claiming an interest in a parcel set forth in the petition for foreclosure could contest the validity or correctness of the forfeited unpaid delinquent taxes, interest, penalties, and fees for any of the following reasons: a) no law authorizes the tax; b) the person appointed to decide whether a tax shall be levied acted without jurisdiction, or did not impose the tax in question; c) the property assessed was exempt from the tax in question, or not legally assessed; d) the tax had been paid within the time limited by law for payment or redemption; e) the tax had been assessed fraudulently; and, f) the description of the property used in the assessment was so indefinite or erroneous that the forfeiture was void.

A person who desired to contest the petition would be required to file written objections with the circuit court clerk, and serve those objections on the foreclosing governmental unit. If the court determined that the owner of property subject to foreclosure was a minor heir, was incompetent, or was without means of support, the court could withhold that property from foreclosure for one year, or could enter an order extending the redemption period. If the court withheld property from foreclosure, a taxing unit's lien for taxes due would not be prejudiced, and that property would be included in the immediately succeeding year's tax foreclosure proceeding.

Judgment. The circuit court would have to enter judgment on a petition for foreclosure at least 10 days after the March 1 immediately succeeding the date the petition was filed. If the court entered a judgment foreclosing the property as requested in the foreclosure petition, all redemption rights to the property would expire.

The court's judgment would have to specify all of the following:

--The legal description and, if known, the street address of the property foreclosed and the unpaid delinquent taxes, interest, penalties, and fees due on each parcel of tax delinquent or certified abandoned property.

--That fee simple title to the property was vested absolutely in the foreclosing governmental unit, without any further rights of redemption.

--That all liens and encumbrances against the property of any kind were extinguished, except current taxes and future installments of special assessments, and liens recorded by this state or the foreclosing governmental unit under the Natural Resources and Environmental Protection Act.

--That the foreclosing governmental unit had good and marketable fee simple title to the property.

--That all existing recorded and unrecorded interests in the property were extinguished except a visible or recorded easement or right-of-way, private deed restrictions, restrictions imposed under the Natural Resources and Environmental Protection Act, or other governmental interests.

--A finding that those entitled to notice and an opportunity to be heard had been provided notice and opportunity.

Fee simple title to property set forth in a petition for foreclosure in which forfeited delinquent taxes, interest, penalties, and fees were not paid before judgment was entered would vest absolutely in the foreclosing governmental unit, and the foreclosing governmental unit would have absolute title to the property. The title would not be subject to any recorded or unrecorded lien and could not be stayed or held invalid except as provided in the bill.

Appeal to Court of Appeals. The foreclosing governmental unit or a person who is determined to have an interest in the foreclosed property could appeal the circuit court's judgment to the court of appeals. An appeal would be limited to the record of the proceedings in the circuit court and would be de novo. The circuit court's judgment foreclosing the property would be stayed until the court of appeals had reversed, modified, or affirmed.

To appeal the judgment, a person appealing would have to pay the amount determined to be due to the county treasurer within 21 days after the judgment was entered, together with a notice of appeal. If the judgment were affirmed on appeal, the amount determined to be due would have to be retained by the county treasurer and credited to the proper fund or account in that county. If the judgment were reversed or modified on appeal, the county treasurer would have to refund the amount determined to be due to the person who appealed the judgment. Finally, the foreclosing governmental unit would be required to record either the judgment or a notice of judgment in the office of the register of deeds.

Recovery of Monetary Damages Only. If a judgment for foreclosure were entered, the owners of any extinguished recorded or unrecorded interest in the property would be prohibited from bringing an action for possession of the property against any subsequent owner, but could, instead, only bring an action to recover monetary damages. The court of claims would have original and exclusive jurisdiction in any action to recover monetary damages, and an action could not be brought more than two years after a foreclosure judgment was entered. Any monetary damages recoverable would be determined as of the date the foreclosure judgment was entered, and could not exceed fair market value of the property on that date.

Sale of Foreclosed Property to Local Governments. By the first Tuesday in July (or in some sale circumstances, the first Tuesday in September) immediately succeeding the entry of judgment vesting absolute title to tax delinquent property in the foreclosing governmental unit, the state would be granted the right of first refusal to purchase property at the greater of the minimum bid or its fair market value by paying that amount to the foreclosing governmental unit. If the state elected not to purchase the property, a city, village, or township could purchase for a public purpose any property located within that city, village, or township set forth in the judgment and subject to sale by payment to the foreclosing governmental unit of the minimum bid. If a city, village or township did not purchase the property, the county could do so. If the property were purchased by a city, village, or township under this provision, the foreclosing governmental unit would have to convey the property to the purchasing city, village, or township within 30 days.

If property purchased by a city, village, township, or county were subsequently sold for more than the minimum bid, together with all the costs incurred relating to demolition, improvements, or infrastructure development, then the excess would be returned to the city, village, township, or county's delinquent tax property sales account, or if the state were the foreclosing governmental unit, to the Land Reutilization Fund. Upon request of the foreclosing governmental unit, a city, village, township, or county

that purchased property would be required to provide the foreclosing governmental unit with free information concerning subsequent sale or transfer of the property. These provisions would apply prior to all land sales described in the act.

Auction Sale and Notice. Subject to the preceding provisions, beginning on the third Tuesday in July immediately succeeding the entry of judgment vesting absolute title to the property in the foreclosing governmental unit, the foreclosing governmental unit or its representative could hold one or more property sales at one or more convenient locations at which property foreclosed by the judgment would have to be sold by auction sale. Notice of the time and location of the sale would be required to be published not less than 30 days before the sale in the county's newspaper, or if there is no county newspaper where the property is located, then in an adjoining county's newspaper. The sale or sales would have to be completed within 15 days. The property would have to be sold to the person bidding the highest amount above the minimum bid, and could be offered as individual parcels or as two or more parcels for sale as a group. The foreclosing governmental unit could require full payment by cash, certified check, or money order at the close of each day's bidding. Within 30 days after the date of a sale, the foreclosing governmental unit would have to convey the property by deed to the person. The deed would vest fee simple title to the property in the person bidding the highest amount above the minimum bid. If the state were the foreclosing governmental unit, the Department of Natural Resources would conduct the sale.

After the sale, and not later than the first Tuesday in September immediately after that sale, a city, village, or township could purchase any property not previously sold by paying the minimum bid to the foreclosing governmental unit. If a city, village, or township did not purchase the property, the county where the property is located could do so. If the property were purchased by a city, village, or township, the county treasurer would have to convey the property to the purchasing city, village, or township within 30 days.

Beginning on the third Tuesday in September immediately after the auction sale, all property not previously sold would have to be re-offered for sale, subject to the requirements for an auction sale. Beginning on the third Tuesday in November immediately after the property sale held in September, all property not previously sold would have to be re-offered for sale again subject to the same requirements, except that the minimum bid would not be required.

["Minimum bid" would mean the minimum amount established by the foreclosing governmental unit for which property could be sold. The minimum bid would have to include all of the following: a) all delinquent taxes, interest, penalties, and fees due on the property (however, if a city, village, or township purchased the property, the minimum bid could not include any taxes levied by that jurisdiction, or any interest penalties, or fees due on those taxes); and, b) the expenses of administering the sale, including all preparations for the sale. The foreclosing governmental unit would be required under the bill to estimate the cost of preparing for and administering the annual sale for purposes of prorating the cost for each property included in the sale.]

Transfer of Property. On December 1 immediately after the date of the property sale held in November, all property not previously sold by the foreclosing governmental unit would have to be transferred to the clerk of the city, village, or township in which the property is located. The city, village, or township could object in writing to that transfer. On December 30, all property not previously sold by the foreclosing governmental unit would be transferred to the city, village, or township, except those parcels to which the cities, villages, or townships had objected. The city, village, or township could then make the property available under the Urban Homestead Act. If the property were not transferred, the foreclosing governmental unit would retain possession of the property.

Delinquent Tax Sales Accounts. A foreclosing governmental unit would be required to deposit the proceeds from the sale of property into a restricted account designated as the Delinquent Tax Property Sales Proceeds for the Year (specified), and the foreclosing governmental unit would direct the investment of the account. The foreclosing governmental unit would be required to credit to the account all interest and earnings from account investments, and proceeds could only be used by the foreclosing governmental unit for the following purposes in the following order: 1) the Delinquent Tax Revolving Fund would be reimbursed for any amounts that had not been charged back to a local unit of government if the local unit was paid the delinquent tax on property offered for sale, whether or not that

property was sold; 2) all costs of the sale of property for the year would be paid; 3) any costs of the foreclosure proceedings for the year, including but not limited to costs of mailing, publication, personal service, and outside contractors would be paid; 4) any costs for the sale of property or foreclosure proceedings for any prior year that had not been paid, or reimbursement from that prior year's delinquent tax property sales proceeds would be paid; 5) any costs incurred by the foreclosing governmental unit in maintaining foreclosed property before the sale, including costs for any environmental remediation; and 6) if the foreclosing governmental unit is the state, any remaining balance would be transferred to the Land Reutilization Fund.

Joint Sale. Two or more county treasurers could elect to hold a joint sale of property. If two or more county treasurers elected to do so, property could be sold at a location outside of the county in which the property was located. The sale could be conducted by any county treasurer participating in the joint sale.

Land Reutilization Fund. Under the bill, the Land Reutilization Fund would be created in the Department of Treasury. The state treasurer could receive money or other assets from any source for deposit into the fund, and would direct the fund's investment. The state treasurer would be required to credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year would remain in the fund and would not lapse to the general fund.

The Department of Treasury could expend money from the fund for any of the following purposes: a) contracts with title insurance companies; b) costs of determining addresses, service of notices, and recording fees; c) defense of title actions as determined by the state treasurer; and, d) other costs incurred in administering the collection of delinquent taxes under the act.

Administrative Uniformity, Fees, Annual Reports, Evaluation. Under the bill, not later than one year after the effective date, the state treasurer would be required to develop the form of several procedures that would be used to administer the collection of taxes, including a) the proof of service and notice, b) the affidavit of publication, and c) the judgment of foreclosure. In prescribing these forms, the state treasurer would be required to actively solicit recommendations from county treasurers and other interested parties.

Not later than March 1 each year, the state treasurer would be required to establish the following fees, adequate to meet the expense incurred by the foreclosing governmental unit, to be added to each parcel on which delinquent taxes remain unpaid: a) a fee not less than $15 for parcels which on the October 1 immediately succeeding the date that unpaid taxes are returned to the county treasurer for forfeiture, foreclosure, or sale, or returned as delinquent; and, b) a fee not less than $175 for each parcel of certified abandoned property and property that is delinquent for taxes, interest, penalties, and fees, if the parcel is forfeited to the county treasurer.

Not later than December 31 each year, each county treasurer would be required to report to the state treasurer detailing the expense incurred, and the adequacy of the fees in relation to those expenses.

Not later than December 31, 2003, a committee of county treasurers selected by the Michigan Association of County Treasurers would be required to submit a report to the House and Senate committees on local government and urban or state affairs, or their successors, on the delinquent tax collection process. The report would contain but not be limited to a) the potential successes and areas of improvement, and b) the adequacy of the fees established under the act.

Revolving Fund Notes. Currently, if a county establishes a Delinquent Tax Revolving Fund and borrows or issues revolving fund notes, it must make application to the Municipal Finance Commission. Under House Bill 4489, the application would be made to the Department of Treasury.

County Treasurers as Paid County Agents Prohibited in Future. Currently, a county board of commissioners that borrows from its Delinquent Tax Revolving Fund is required to pay from the surplus in the fund an amount equal to 20 percent of the following amount to the county treasurer for services as agent for the county and the remainder of the following amount to the county treasurer's office for delinquent tax administration expenses: a) for any delinquent tax on which the interest rate before sale exceeds one percent per month, 1/27 of the interest collected per month; and, b) for any delinquent tax on which the interest rate before sale is one percent per month or less, 3/64 of the interest collected each month.

Under House Bill 4489, a county treasurer elected or appointed after the effective date of the bill would not be eligible for payment for services as an agent, unless the county treasurer held office and had not vacated office on the effective date.

Department of Natural Resources. Under current law, the director of the Department of Natural Resources, with the approval of the Commission of Natural Resources, may withhold from sale any land suitable for state forests, state parks, state game refuges, public hunting, or recreational grounds. The bill would eliminate the required approval of the Natural Resources Commission, and allow the director to withhold from sale any property the director deemed suitable for these purposes. The bill specifies that a deed issued during the tax reversion process would remain subject to any restrictions approved by the state, or the foreclosing governmental unit, and recorded with the register of deeds under the Natural Resources and Environmental Protection Act. The bill also would eliminate the provisions concerning the process for applications from a local tax collecting unit or a county, requesting the conveyance by the Department of Natural Resources of certified special residential property for which the redemption period has expired.

Further, under the bill, the Department of Treasury could hold combined or separate show cause hearings for different owners of a recorded property interest. In addition, the bill would provide that for all property the title to which vested in this state after October 25, 1997, the owner of a recorded property interest who had been properly served with a notice of hearing, and who failed to redeem the property, could not assert either a) that notice was insufficient or inadequate on the grounds that some other owner of a property had not also been served, or b) that the redemption period was extended on the grounds that some other owner of a property interest had not also been served.

Enacting Sections and Repealed Sections of Law. The bill specifies that section 131e of the General Property Tax Act, as amended by the bill, would be retroactive and would be effective for all property the title to which vested in the state after October 25, 1976. The bill also specifies that 30 sections of the new act would go into effect October 1, 1999.

Further, the bill would repeal two sections of the General Property Tax Act, concerning certified special residential property tax rolls, and the sale of certified special residential property.

And, effective December 31, 2003, House Bill 4489 would repeal 20 sections of the General Property Tax Act concerning, among other things, a county treasurer's annual tax sale, the current petition, notice, and publication requirements to sell delinquent tax lands (except the limits on advertising costs); the duties during this process of the county clerk and the circuit court judge; the vesting of title in the state; the disposition of disputed taxes; conveyance of land to the state; cancellation of taxes and special assessments; deference of special assessments pledged for repayment of bonds; conveyance to the state housing department authority; sale, cancellation, and forfeiture; the purchaser's certificate; the quieting of title; tax deeds; and, redemption.

Finally, effective December 31, 2006, the bill would repeal 37 sections of the General Property Tax Act concerning, among other things, redemption and annulment; the grounds for bringing suit concerning illegal taxes; competent evidence; loss of certificate of sale or deed; purchase of state bids after tax sale; withholding sale because of error; rejected taxes; grounds for withholding conveyance; unprejudicial irregularities; land office commissioner; waste injunction by certificate holder; abandoned land; lands withheld from tax sale; bids; conveyance of certified special residential property; redemption by owner; municipal redemptions; management contracts with licensed real estate brokers; writ of assistance; proof of notice on improved residential parcels; contact of owner by county department of social services; persons entitled to release and quitclaim; grantees' lien; notice by tax purchaser to owners; failure to redeem; proceedings to set aside sale; waste and removal of property from tax delinquent lands; and county treasurer entitled to injunction.

Tie-Bars. House Bill 4489 is tie-barred to Senate Bills 343, 488, and 489. None of the bills would become law unless all were enacted. Senate Bill 343 would create an Urban Homesteading Program that would make property available to qualified buyers. Senate Bill 488 would create the Certification of Abandoned Property for Accelerated Forfeiture Act. Finally, Senate Bill 489 would provide that certified abandoned property would be subject to forfeiture, foreclosure, and sale.

Senate Bill 488

The bill would create the Certification of Abandoned Property for Accelerated Forfeiture Act. The bill would prescribe the duties of the local unit of

government and the county treasurer; provide a sample resolution to be adopted in order to declare accelerated forfeiture; and, describe an affidavit of interest that an owner could file to delay certification for one year.

Under the bill, a local unit of government (defined to mean a city, village, or township) could make a declaration of accelerated forfeiture of abandoned property by adopting a resolution stating three conditions: the existence of a large number of parcels of abandoned tax delinquent property; the contribution of such property to crime, blight, and decay; and, that certification of such property as certified abandoned property would result in accelerated forfeiture and foreclosure, and would return the property to productive use more rapidly, thereby reducing crime, blight, and decay.

If a local unit of government were to make a declaration of accelerated forfeiture of abandoned property before October 1 of any tax year, the local unit could identify property within the local unit as abandoned property, if all of the following procedures were met: before February 1, the local unit inspected the property and determined that it was abandoned; at the time of inspection, the local unit posted a notice on the property that if taxes levied were returned as delinquent, the property will be subject to accelerated forfeiture and foreclosure, unless an affidavit claiming the property is not abandoned was filed; the local unit sends a copy of the notice to the owner of the property or to the taxpayer of record by first-class mail; and taxes levied on the property were returned as delinquent on March 1 to the county treasurer. If the local unit of government determined that the property was occupied by an owner or a person with a legal interest, the local unit would be prohibited from certifying the property as abandoned.

The bill would provide that an owner or person with a legal interest could file an affidavit with the local unit claiming the property was not abandoned before taxes were returned as delinquent, or with the county treasurer after taxes were returned as delinquent. If an affidavit were filed, the property would not be forfeited on the immediately preceding March 1, but would be forfeited on the immediate succeeding March 1 if all delinquent taxes, interest, penalties, and fees had not been paid. If no owner or person with a legal interest responded, then the local unit could certify the property as abandoned.

Senate Bill 488 is tie-barred to Senate Bill 343, which would create an urban homesteading program; Senate Bill 489, which also would provide that certified abandoned property would be subject to forfeiture, foreclosure, and sale; and, House Bill 4489, which provides that tax delinquent property would be subject to forfeiture, foreclosure, and sale. The bills would not become law unless all of the bills were enacted.

Senate Bill 489

The bill would amend the General Property Tax Act (MCL 211.79, 211.79a and 211.79b) to define certified abandoned property that would be subject to forfeiture, foreclosure, and sale; and, also to specify the rights and responsibilities of those who hold tax deeds. Under the bill, the new provisions would apply for taxes levied after December 31, 1998.

Specifically, under Senate Bill 489, "certified abandoned property" would mean property that was returned as delinquent to the county treasurer on March 1 of each tax year and was certified as certified abandoned property under the Certification of Abandoned Property for Accelerated Forfeiture Act [as proposed in Senate Bill 488].

Under the bill, a person who holds a tax deed issued on abandoned property could quiet title in the circuit court by satisfying the following requirements.

1) Conduct a title search.

2) Send notice by mail, return receipt requested, to the owner and to all who have a legal interest in each parcel subject to accelerated foreclosure, as determined by the records in the office of the register of deeds, and in records maintained by the county treasurer and the state treasurer. If for any reason the notice could not be delivered, notice would be required by publication for four successive weeks, once each week, in a newspaper published and circulated in the county in which the parcel is located, if there is one, or if not, then publication in a newspaper published and circulated in an adjoining county.

3) Request that the city building inspector inspect the property and execute an affidavit attesting that it is abandoned, vacant, dilapidated, or open to entrance or trespass. The cost of the inspection would be paid by the tax deed holder and would be included in the amount necessary to redeem the property.

4) Post a notice on the abandoned property not less than 90 days before a foreclosure action is brought.

5) In the notice, include: the legal description, parcel number, and if known, the street address of the abandoned property; a statement of the total amount that must be paid to the county treasurer to redeem the abandoned property within 90 days; and, a statement that unless taxes are paid before the 90-day redemption period expires and a foreclosure judgment is entered, title to the abandoned property will vest absolutely in the deed holder.

If the abandoned property is not redeemed by the owner or a person with a legal interest by payment to the county treasurer within 90 days, the tax deed holder could bring an action in the circuit court where the abandoned property is located and petition the court to issue a judgment to quiet title in favor of the deed holder. The tax deed holder would be required to provide all of the following to the court: a) an affidavit from the city building inspector; b) a title search that identified all owners and those with a legal interest in the abandoned property; c) proofs of service; and, d) an affidavit from the county treasurer certifying to the lack of payment within the 90-day period.

If the circuit court were to enter a judgment in favor of the deed holder, the court would be required to foreclose the abandoned property, and under the bill that judgment would be required to specify: a) the legal description, street address, and parcel number; b) that fee simple title is vested absolutely in the deed holder without any further rights of redemption; c) that as of the date of judgment, all delinquent property taxes, demolition liens, and all other municipal liens of any kind, except future installments of special assessments, were extinguished; d) that all existing recorded and unrecorded interests in the property were extinguished, except a visible or recorded easement or right-of-way; and, e) that the petitioning deed holder had good and marketable fee simple title to the property.

If a judgment of foreclosure was entered and all recorded and unrecorded interest was extinguished, the owner of any interest would be prohibited from bringing an action for possession of the property against any subsequent owner, but could bring an action to recover monetary damages. However, an action to recover monetary damages could not be brought more than two years after a foreclosure judgment was entered, and would be determined as of the foreclosure judgment date.

Under Senate Bill 489, property would be considered abandoned if all of the following requirements were satisfied: a) within 30 days before the foreclosure proceedings began, the deed holder mailed by certified mail, return receipt requested, to the last known address of the owner and all who have a legal interest, a notice that the property was abandoned and that the deed holder intended to foreclose it; b) before commencing foreclosure proceedings, the deed holder executed and recorded an affidavit in the office of the register of deeds that states he or she had given notice and there had been no response, and that a personal inspection had been made and that no one was occupying the abandoned property; c) the deed holder mailed by certified mail, return receipt requested, a copy of the affidavit to the owner or any person with a legal interest before commencing foreclosure proceedings; and d) the owner or any person with a legal interest in the abandoned property did not give a written affidavit to the deed holder (and record a duplicate original in the office of the register of deeds), stating that the owner or person with a legal interest in the abandoned property was occupying or intends to occupy the abandoned property.

Senate Bill 489 is tie-barred to Senate Bill 343, which would create an urban homesteading program to make property available to qualified buyers; Senate Bill 488, which would provide for accelerated certification of abandoned property; and, House Bill 4489, which would provide that tax delinquent property would be subject to forfeiture, foreclosure, and sale. The bills would not become law unless all the bills were enacted.

Senate Bill 507

The bill would create the Tax Reverted Property Emergency Disposal Act. Under the bill, a local unit of government (defined to be a city, village, or township) could obtain clear title to tax reverted property, the title to which vested in the local unit of government prior to January 1, 2000, if a declaration of emergency backlog were made. Under the bill, the procedures would be as follows.

Resolution to Declare Emergency Backlog. A local unit of government could make a declaration that an emergency backlog of tax reverted property exists within a portion of the local unit, if the legislative

body of the local unit approved a resolution at a public meeting. The resolution would be required to state that a) the existing inventory of tax reverted property within all or a portion of the local unit was too large and of uncertain title, b) that the tax reverted property was impairing the local unit's ability to market the tax reverted property by conventional means, and c) that the tax reverted property was contributing to the spread of neighborhood blight and deterioration.

Title Insurance Companies. If a declaration of emergency backlog were made, the local unit would be required to enter into a contract with one or more licensed title insurance companies to identify the owners of a recorded property interest in any parcel of tax reverted property located within the area identified in the resolution. If the post office address of a person with a recorded property interest in the tax reverted property could not be determined, the local government would be required to review the records of the treasurer, the records of the assessor, and the qualified voter file.

Notice and Affidavit Requirements. After a title search and not less than 30 days before a quiet title action was begun, the local unit of government would be required to send notice by certified mail return receipt requested to all people having a recorded interest in each parcel. The bill also would require that the notice be mailed to the property by first-class mail, addressed to "occupant." If the local unit were unable to ascertain the address of a person with a recorded property interest in the tax reverted property, or if notice by certified mail were refused, the local unit would be required to serve notice by publication. The bill would require that notice be published for three successive weeks in a newspaper published and circulated in the county in which the tax reverted property is located, or if there were no county newspaper, in a newspaper published in an adjoining county. The bill would require that proof of publication by affidavit of the printer or publisher of the newspaper be recorded with the register of deeds in the county where the tax reverted property is located. Further, an authorized officer of the local unit of government would be required to file an affidavit attesting to his or her compliance with the notice requirements in the office of the register of deeds.

Under the bill, the notice would be required to include all of the following: a) the date the property was deeded to the local unit of government; b) the date of the court hearing; c) a statement that a person notified could lose his or her interest in the property as a result of a circuit court judgment quieting title to the tax reverted property; d) a legal description or parcel number and the street address of the tax reverted property, if available; e) the person or people to whom the notice is addressed; f) the total of taxes, interest, penalties, and fees due as of the expiration of the redemption period; and, g) a statement that unless all taxes, interest, fees, and penalties were paid before a judgment quieting title was entered, absolute title to the tax reverted property would vest in the local unit of government without any further redemption rights.

The bill further specifies that after the local unit of government made a declaration that an emergency backlog of tax reverted property exists, rights of redemption to tax reverted property would not be transferable and a subsequent transferee would not be entitled to notice and would have no rights of redemption.

Quiet Title Action in Circuit Court. After notice was provided, the local unit of government could bring a quiet title action in the circuit court for the county where the tax reverted property is located. If a local unit brought a quiet title action, a person claiming a recorded interest could contest the validity or correctness of the unpaid delinquent taxes, interest, penalties and fees for one or more of the following reasons: a) no law authorized the tax; b) the person appointed to decide whether a tax would be levied acted without jurisdiction, or did not impose the tax in question; c) the person or property assessed was exempt, or was not legally assessed; d) the tax had been paid; and, e) the tax was assessed fraudulently. Under the bill, an owner who wished to contest a quiet title action would be required to file written objections with the circuit court clerk, and to serve those objections on the local unit of government.

Under the bill, the circuit court's judgment would be required to specify all of the following: a) the legal description and, if known, the street address of the tax reverted property and the unpaid delinquent taxes on each parcel; b) that fee simple title to the tax reverted property is vested absolutely in the local unit of government, without any further rights of redemption; c) that all liens against the tax reverted property of any kind are extinguished, except a visible or recorded easement or right-of-way; d) that the local unit of government has good and marketable fee simple title to the tax reverted property; and e) that any rights or interest claimed by any person to the tax reverted property are extinguished.

The bill specifies that fee simple title to tax reverted property would vest absolutely in the local unit of government upon entry of the judgment, and that the local unit of government would have absolute title to the property. The local unit of government's title would not be subject to any recorded or unrecorded lien, and would not be stayed or held invalid, unless the judgment were appealed and overturned. The local unit or a person claiming an interest in the tax reverted property could appeal the circuit court's judgment to the court of appeals, and the circuit court's judgment would be stayed until the court of appeals issued an opinion. To appeal the circuit court's judgment, a person would be required to pay the amount determined to be due to the local unit of government under the judgment within 21 days, together with a notice of appeal.

Right of Redemption. Finally, the bill specifies that if the title search identified any person who had a recorded interest in the tax reverted property who had not been provided notice of tax foreclosure, that person would not have any rights of redemption under the General Property Tax Act, and would only have the rights of redemption provided under the bill.

Definitions. Senate Bill 507 would define "tax reverted property" to mean property the title to which had vested in a local unit of government pursuant to the General Property Tax Act as a result of the nonpayment of delinquent taxes and nonredemption within the statutory period provided under that act.

Tie Bar. Senate Bill 507 is tie-barred to House Bill 4489, which provides that tax delinquent property would be subject to forfeiture, foreclosure, and sale as provided under that bill. The bill would not become law unless House Bill 4489 also were enacted.

BACKGROUND INFORMATION:

Delinquent Tax Reversion Process. A brief explanation of the delinquent tax property reversion process follows. The explanation is an excerpt from Part II of the 19-page report issued by the Citizens Research Council (CRC) in April 1999, entitled "Delinquent Property Taxes as an Impediment to Development in Michigan." For a more complete description, the reader is referred to the entire report which is available at the CRC website. Chart I on page three of that report provides an overview of the six-year process. The report can be obtained at the following address: http://www.crcmich.org.

Brief Description of the Delinquent Tax Process in Michigan. Although the immediate local unit of government is accorded the responsibility of all local tax collections including the county portion, it is the county that acts on behalf of the state as collection agency of any delinquent portion of property taxes. Summer and winter tax payments (due July 1 and December 1 in most Michigan communities) are payable to local taxing units--the cities and townships--who forward non-local portions to their respective units: the State, counties, local schools, and intermediate school districts. Unpaid taxes are returned as delinquent on March 1 of the following year to the county treasurer, who then certifies them as such. The county reimburses local units, local schools, intermediate school districts, and regional authorities for lost revenues that are due to delinquencies. They do this through the county delinquent tax revolving fund.

Upon delinquency, the taxpayer of record becomes liable for delinquency fees and penalties, as well as interest, at a rate of one percent per month, on the unpaid balance. In addition, the taxpayer of record is liable for a one percent local administration fee, and a four percent county administration fee. Interest, fees, and penalties increase throughout the several stages of delinquency.

Delinquent Tax Revolving Fund. Michigan allows counties to establish a delinquent tax revolving fund to reimburse local units for revenues forgone by delinquencies. Counties may issue revolving fund notes (short-term borrowing), backed by the full faith and credit of the county, to establish and maintain the revolving tax fund. Payments to the fund are made by delinquent tax redemptions and proceeds from the annual tax sale. According to the Hudson Institute, most counties show an annual surplus in their delinquent tax revolving funds, due to the significant interest and penalties due for delinquent tax payments.

County Tax Lien Sale. After two years and two months of delinquency, the county holds a tax lien sale at which buyers can purchase the right to become lien holders on the delinquent taxes payable on the property. The purpose is to sell the right to become senior lienholder on property that has been delinquent for over two years. Redemption costs accelerate if the property goes to tax sale. Specifically, interest on the delinquent property is recalculated at 1.25 percent per month, up from 1 percent per month during the 26-month delinquency period leading up to the sale. It is

important to note that properties that remain delinquent after the sale of a tax lien can come up for bid at subsequent tax sales for subsequent delinquencies. It is therefore possible for several liens, held by different interests, to be outstanding on a tax delinquent property.

During the year immediately after the tax sale, purchasers of tax liens are entitled to: a) any delinquent tax proceeds paid on the property; b) 1.25 percent per month interest on delinquent taxes; and, c) any administrative fees paid to obtain the lien.

Tax Sales and the Bidding Process. The county tax lien sale is held on the first Tuesday of each May, a statutorially prescribed date. However, in order to allow for the last-minute rush of tax payments, many counties offer only one tax lien for sale on this day. Most of the liens are offered for sale beginning the next day, to allow time for processing the last-minute tax payments. The entire sale may take several days in larger counties. The sale price of the lien is the total amount of delinquent taxes, interest, and fees due on the property for the delinquent tax year(s).

The bidding process is not conventional. In law, if there is more than one buyer, the bidding proceeds with each potential buyer pledging a successively declining interest in ownership of the property. That is, if five buyers wish to buy the same lien, then the winning bid is the buyer who is willing to accept the smallest ownership interest in the property, when and if the process gets to the point where they may take partial title to the property. When the ownership percentage is less than 100 percent, any such lien, if perfected, entitles the holder to a tenancy in common with the owner.

The lien holder, upon purchase, is entitled to the benefits noted above--tax proceeds, 1.25 percent per month interest on taxes, and administrative fees. If the taxes are not redeemed, the lien holder may eventually take title to the property by perfecting the lien. (See discussion on page 5 of the report.)

Tax Lien Sales Sometimes Ineffective. Although tax lien sales serve to effectively preserve owners' property rights, the general efficacy of the tax sale is under scrutiny, given that most unredeemed liens are never perfected. That is, most lien purchasers have no intention of eventually taking control of the property, but rather are solely interested in the redemption of the taxes by the owner. If the owner never redeems the taxes, and the lien buyer never perfects the lien, then the property is bid off to the state. Further, the tax sale is ineffective in many of the state's urban counties, because a high percentage of liens offered do not generate purchaser interest. In many urban counties, properties offered at tax sale are unattractive to buyers because they have a relative low sale value to tax delinquency ratio.

When Liens are not Purchased. If the lien is not purchased at the tax sale, the lien is bid off to the state, which then acts as custodian for the property. The lien is sent to the Department of Treasury's Local Property Service Division, where it remains available for sale or redemption until April 20 of the following year. During the six-month to one-year period with the Department of Treasury, the property owner and all interested parties are given one last opportunity to redeem the taxes and prevent reversion to the state.

Dow Hearings and Due Process through Notice. Before the property title can pass to the state, a Michigan Supreme Court decision mandates that property notification shall be sent to all potentially affected interests in the property. *Dow* v. *Michigan* 396 Mich 192 (1976) arose when plaintiffs, as land contract purchasers of property that became tax delinquent, were provided no formal notice of the delinquency or tax sale because of their unrecorded interest in the property. Finding that the plaintiffs had a significant interest within the meaning of the Due Process Clause of the U.S. Constitution, the *Dow* court held that written, mailed notice need be provided to all such interests, not just recorded interests.

Public Act 476 of 1996. In an effort to ease notice requirements by statute, the legislature enacted Public Act 476 of 1996. PA 476 accords actual notice to recorded interests only, but extends the time of the final redemption period until all such recorded interests are found and notified. Before *Dow*, the state was required to provide such notice to property owners only. After *Dow*, the state was required to find (and notify) unrecorded interests in the property before the deed could be transferred, an expensive and time-consuming task. After Public Act 476 of 1996, the state's range of notice extended only to recorded interests, and thereby placed a burden on potential significant property interests, such as land contractors and mortgage lenders, to record their interests in order to preserve their rights in state deed transfer proceedings. However, Public Act 476 of 1996 did not resolve the problem of obtaining title insurance on tax reverted properties. Private title insurers are reluctant to write policies against such properties,

because they fear having to defend possible due process challenges to Public Act 476 of 1996.

The City of Detroit. The City of Detroit does not send local portions of delinquent taxes to Wayne County for collection. In accordance with the city charter, local portions of delinquencies are retained, as partial tax payments are applied to local taxes first. Unpaid county taxes are subject to the same collection procedures as other Michigan counties. The local tax collection process in Detroit is similar to the typical county tax collection process, insofar as a tax delinquent property becomes subject to a lien after a specified time. Liens on city taxes are not offered for sale to the public, although the city charter allows for it. This leaves the threat of a civil action by the city--judicial foreclosure--as the sole motivation for the taxpayer to resolve delinquency. According to the city law department, Detroit has a higher tax collection rate than does the county of Wayne.

Securitized Liens in Detroit and Kalamazoo. A set of state laws passed in 1998 allows Detroit and Kalamazoo to securitize tax liens. Public Act 379 of 1998 allows municipalities that do not return unpaid ad valorem taxes to the county to package delinquent tax liens into security instruments, and sell bonds backed by them. This law allows Detroit and Kalamazoo to a) set up tax lien authorities that act as collection agencies for delinquent taxes, b) purchase tax liens against local delinquencies as they become available, and c) purchase concomitant county tax liens, if any (to reduce the number of possible outstanding liens on city properties). Any bonds sold against tax lien securities are capped at an interest (or discount) rate of 10 percent. The bonds are not a debt of the State or the issuing city, and are secured solely by the tax liens. Bond proceeds can be used to step up local tax collection efforts, specifically by hiring full-time collection staff at the delinquent tax authorities, or to hire private collection agencies, or both.

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that House Bill 4489 would increase revenue to local units of government by accelerating the recoupment of delinquent taxes. State education property tax revenue to the state also would increase. (5-13-99)

The Senate Fiscal Agency notes that with regard to Senate Bill 488, there would be no fiscal impact on state or local government. (5-18-99) With regard to Senate Bill 507, the Senate Fiscal Agency notes data are not available to determine the fiscal impact. (5-10-99)

ARGUMENTS:

For:

Michigan's current two-track, six-year tax reversion process is too long and too cumbersome. Under the current system, delinquent tax properties that are not redeemed are either acquired by private purchasers, or deeded to the state. The process for properties deeded to the state can take more than five or six years. More important, title companies are often reluctant to insure title to tax delinquent properties acquired from the state, largely because of concerns about attacks on the state's title based on the adequacy of notice--both because of concerns that the state may not have complied with statutory requirements and because of concerns that a title defense may require defending a constitutional challenge to the statute. As a consequence, many delinquent tax properties deeded to the state are effectively unmarketable.

The current tax reversion process allows properties to deteriorate and serves as a barrier to their productive use. The process promotes urban blight as it thwarts urban reinvestment. These bills would reform the tax reversion system to 1) shorten the process; 2) simplify the steps for taxpayers; and 3) provide clear and marketable title to tax reverted property. Clear title will facilitate property improvements and it will encourage new construction and renovation. What's more, these bills strike the necessary balance between property owners' rights and the need for neighborhood revitalization in the heart of our urban centers. The legislation achieves that balance by providing for sufficient notice to all who have an interest in tax delinquent property. Following ample notice, the bills allow a court to reliably quiet title to the property, and then to transfer absolute title to a new owner who can invest in the property with confidence and security. This legislation, together with the legislation that creates the Urban Homesteading Program, can help improve the quality of life in cities throughout Michigan.

For:

The Hudson Institute has noted that during its 18-month project to develop the Urban Homesteading Program here in Michigan, its project directors were determined to identify serious barriers to urban redevelopment. They note there is very strong agreement across the state that the biggest barrier to homesteading--indeed, the biggest barrier to

community preservation and revitalization in general--is Michigan's tax reversion process for tax delinquent homes and rental housing. The current law, dating back more than a century to the Depression of 1893, is designed to protect homeowners and farmers who are having financial difficulties. While a laudable objective, the process fails completely to address the problems of abandoned housing in Michigan's cities: homes deteriorate until they are unfit to live in, and destroy the neighborhoods in which they are located, while the tax reversion process grinds on for years.

The Hudson Institute project directors noted that they heard about the tax reversion process from mayors, from local officials who are responsible for housing and community development, and from nonprofit community development organizations, almost everywhere they went in Michigan.

Consequently, the Hudson Institute recommendations for urban redevelopment covered two issues that the project directors have identified as keys to a successful program: urban homesteading and home ownership, and reform of the tax reversion process. These policy areas, while distinct, are interrelated. By creating an urban homesteading program, the state will create the opportunity to restore tax reverted properties to productive use. By reforming the tax reversion process, the state will allow urban homesteaders to own their own homes, before those houses have deteriorated past the point of no return. Abandoned property also will be available for other community development activities, while the buildings are still usable. Taken together, these proposals encourage the reclamation of damaged urban neighborhoods, and they preserve existing communities.

Against:

These bills may not provide property owners with ample notice and opportunity for hearing to contest the decision that their tax delinquent property will be foreclosed. If so, the bills will violate property owners' constitutional rights.

According to the Real Property Law Section of the State Bar of Michigan, concerns about validity of the state's title are found in state and federal constitutional due process requirements. Specifically, the Michigan Supreme Court has ruled that "the state has no proper interest in taking a person's property for nonpayment of taxes without proper notice and opportunity for hearing at which the person can contest the state's right to foreclose and cure any default determined . . . by reason of the Due Process Clause, it may not do so." *Dow* v *State of Michigan*, 306 Mich 192, 240 NW2d 450, 459 (1976). The court ruled, "Before the state may deprive parties with a significant interest in property of those interests, the Constitution requires that they be afforded an opportunity to be heard at a meaningful time in a meaningful manner." Additionally, the court ruled that such parties were entitled to notice "reasonably calculated, under all the circumstances," to apprise them of that opportunity. The United States Supreme Court has expressed similar views in *Mennonite Board of Missions* v *Adams*, 462 US 791, 77L.Ed2d 180, 103 Sup Ct 2706 (1983).

Although these bills emphasize notice for those who have a recorded interest in the property, they seem not to afford ample notice to parties whose interests in property may be granted or transferred in a divorce, death, or other probate proceeding, where such transfers often go unrecorded. The fact that a party has an interest that does not appear of record does not mean that he or she is not deserving of protection--both as a constitutional matter, and as a matter of public policy.

Analyst: J. Hunault

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

EXHIBIT F

Basham
Birkholz
Bisbee
Bishop
Bogardus
Bovin
Bradstreet
Brater
Brewer
Brown, B.
Brown, C.
Byl
Callahan
Cassis
Caul
Cherry
Clark, I.
Clarke, H.
Daniels
DeHart
Dennis
DeRossett
DeVuyst
DeWeese
Frank
Garcia
Geiger
Gieleghem
Gilbert
Godchaux
Gosselin
Hager
Hale
Hanley
Hansen
Hardman
Hart
Howell
Jacobs
Jamnick
Jansen
Jelinek
Jellema
Johnson, Rick
Julian
Kelly
Koetje
Kowall
LaForge
LaSata
Law
Lemmons
Lockwood
Mans
Martinez
Mead
Middaugh
Minore
Mortimer
Neumann
O'Neil
Pappageorge
Patterson
Pestka
Price
Prusi
Pumford
Quarles
Richardville
Richner
Rison
Sanborn
Schauer
Schermesser
Scott
Scranton
Shackleton
Sheltrown
Shulman
Spade
Stallworth
Stamas
Switalski
Tesanovich
Thomas
Toy
Van Woerkom
Vander Roest
Vaughn
Vear
Voorhees
Wojno
Woodward
Woronchak

In The Chair: Patterson

Rep. Julian moved that Rep. Tabor be excused temporarily from today's session.
The motion prevailed.

Rep. Raczkowski moved that Reps. Mortimer, Perricone and Geiger be excused temporarily from today's session.
The motion prevailed.

By unanimous consent the House returned to the order of

Messages from the Senate

The Speaker laid before the House
House Bill No. 4489, entitled
A bill to amend 1893 PA 206, entitled "The general property tax act," by amending the title and sections 57, 59, 60, 61, 73c, 74, 87c, 107, 108, 131, 131c, and 131e (MCL 211.57, 211.59, 211.60, 211.61, 211.73c, 211.74, 211.87c, 211.107, 211.108, 211.131, 211.131c, and 211.131e), the title and section 59 as amended by 1983 PA 254, sections 57, 60, 61, 73c, 74, 108, 131, and 131c as amended by 1993 PA 291, section 87c as amended by 1988 PA 450, section 107 as amended by 1998 PA 378, and section 131e as amended by 1996 PA 476, and by adding sections 60a, 67c, 78, 78a, 78b, 78c, 78d, 78e, 78f, 78g, 78h, 78i, 78j, 78k, 78*l*, 78m, 78n, 78o, and 78p; and to repeal acts and parts of acts.
(The bill was received from the Senate on June 9, with amendments, full title inserted and immediate effect given by the Senate, consideration of which, under the rules, was postponed until today, see House Journal No. 54, p. 1434.)
The question being on concurring in the adoption of the amendments made to the bill by the Senate,
The amendments were concurred in, a majority of the members serving voting therefor, by yeas and nays, as follows:

Roll Call No. 715 **Yeas—94**

Allen
Baird
DeWeese
Ehardt
Kelly
Kilpatrick
Richardville
Rivet

Basham	Faunce	Koetje	Rocca
Birkholz	Frank	Kowall	Sanborn
Bisbee	Garcia	Kuipers	Schauer
Bishop	Gieleghem	Kukuk	Schermesser
Bogardus	Gilbert	LaForge	Scott
Bovin	Godchaux	LaSata	Scranton
Brater	Gosselin	Law	Shackleton
Brewer	Green	Lockwood	Shulman
Brown, B.	Hager	Mans	Spade
Brown, C.	Hale	Martinez	Stallworth
Byl	Hanley	Mead	Stamas
Callahan	Hansen	Middaugh	Switalski
Cassis	Hardman	Minore	Thomas
Caul	Hart	O'Neil	Toy
Cherry	Howell	Pappageorge	Van Woerkom
Clark, I.	Jacobs	Patterson	Vander Roest
Clarke, H.	Jamnick	Pestka	Vaughn
Daniels	Jansen	Price	Voorhees
DeHart	Jelinek	Pumford	Wojno
Dennis	Jellema	Quarles	Woodward
DeRossett	Johnson, Rick	Raczkowski	Woronchak
DeVuyst	Julian		

Nays—7

Bradstreet	Prusi	Sheltrown	Vear
Neumann	Richner	Tesanovich	

In The Chair: Patterson

The House agreed to the full title of the bill.
The bill was referred to the Clerk for enrollment printing and presentation to the Governor.

Rep. Scott moved that Rep. Lemmons be excused temporarily from today's session.
The motion prevailed.

The Speaker laid before the House
House Bill No. 4509, entitled
A bill to create an urban homestead program for multifamily public housing; to provide that certain local governmental units and public housing entities create and administer urban homestead programs for multifamily public housing; to prescribe the powers and duties of certain state and local governmental units and public housing entities; and to provide for the disposition of personal and real property.
(The bill was received from the Senate on June 9, with amendment and immediate effect given by the Senate, consideration of which, under the rules, was postponed until today, see House Journal No. 54, p. 1436.)
The question being on concurring in the adoption of the amendment made to the bill by the Senate,
The amendment was concurred in, a majority of the members serving voting therefor, by yeas and nays, as follows:

Roll Call No. 716

Yeas—89

Allen	DeVuyst	Kilpatrick	Richner
Baird	DeWeese	Koetje	Rison

EXHIBIT G

By unanimous consent the Senate returned to the order of

General Orders

Senator Rogers moved that the Senate resolve itself into the Committee of the Whole for consideration of the General Orders calendar.

The motion prevailed, and the President pro tempore, Senator Schwarz, designated Senator Emerson as Chairperson.

After some time spent therein, the Committee arose; and, the President pro tempore, Senator Schwarz, having resumed the Chair, the Committee reported back to the Senate, favorably and with a substitute therefor, the following bill:

House Bill No. 4082, entitled

A bill to amend 1980 PA 300, entitled "The public school employees retirement act of 1979," by amending section 61 (MCL 38.1361), as amended by 1989 PA 194.

Substitute (S-2).

The following are the amendments to the substitute recommended by the Committee of the Whole:

1. Amend page 2, line 24, after "(3)" by striking out "UNTIL JULY 1, 2002,".
2. Amend page 4, line 23, after "SUBSECTIONS" by striking out "(3), (4)," and inserting "(4)".

The Senate agreed to the substitute, as amended, recommended by the Committee of the Whole and the bill as substituted was placed on the order of Third Reading of Bills.

By unanimous consent the Senate returned to the order of

Motions and Communications

Senator Rogers moved that the rules be suspended and that the following bills, now on the order of Third Reading of Bills, be placed on their immediate passage:

House Bill No. 4489
House Bill No. 4509
House Bill No. 4733
House Bill No. 4082
House Bill No. 4499

The motion prevailed, a majority of the members serving voting therefor.

Senator Rogers moved that the following bills be placed at the head of the Third Reading of Bills calendar:

House Bill No. 4489
House Bill No. 4509
House Bill No. 4733
House Bill No. 4499
House Bill No. 4082

The motion prevailed.

By unanimous consent the Senate returned to the order of

Third Reading of Bills

The following bill was read a third time:

House Bill No. 4489, entitled

A bill to amend 1893 PA 206, entitled "The general property tax act," by amending the title and sections 57, 59, 60, 61, 73c, 74, 87c, 107, 108, 131, 131c, and 131e (MCL 211.57, 211.59, 211.60, 211.61, 211.73c, 211.74, 211.87c, 211.107, 211.108, 211.131, 211.131c, and 211.131e), the title and section 59 as amended by 1983 PA 254, sections 57, 60, 61, 73c, 74, 108, 131, and 131c as amended by 1993 PA 291, section 87c as amended by 1988 PA 450, section 107 as amended by 1998 PA 378, and section 131e as amended by 1996 PA 476, and by adding sections 60a, 67c, 78, 78a, 78b, 78c, 78d, 78e, 78f, 78g, 78h, 78i, 78j, 78k, 78*l*, 78m, 78n, 78o, and 78p; and to repeal acts and parts of acts.

The question being on the passage of the bill,

Senator North offered the following amendment:

1. Amend page 32, line 14, by striking out all of subsection (3) and inserting:

"(3) THE FORECLOSING GOVERNMENTAL UNIT MAY WITHHOLD THE FOLLOWING PROPERTY FROM THE PETITION FOR FORECLOSURE FILED UNDER THIS SECTION:

(A) PROPERTY THE TITLE TO WHICH IS HELD BY MINOR HEIRS OR PERSONS WHO ARE INCOMPETENT OR WITHOUT MEANS OF SUPPORT UNTIL A GUARDIAN IS APPOINTED TO PROTECT THAT PERSON'S RIGHTS AND INTERESTS.

(B) PROPERTY THE TITLE TO WHICH IS HELD BY A PERSON UNDERGOING SUBSTANTIAL FINANCIAL HARDSHIP.

(4) IF A FORECLOSING GOVERNMENTAL UNIT WITHHOLDS PROPERTY FROM THE PETITION FOR FORECLOSURE UNDER SUBSECTION (3), A TAXING UNIT'S LIEN FOR TAXES DUE OR THE FORECLOSING GOVERNMENTAL UNIT'S RIGHT TO INCLUDE THE PROPERTY IN A SUBSEQUENT PETITION FOR FORECLOSURE IS NOT PREJUDICED." and renumbering the remaining subsection.

The amendment was adopted, a majority of the members serving voting therefor.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

Roll Call No. 356

Yeas—38

Bennett	Gast	McCotter	Shugars
Bullard	Goschka	McManus	Sikkema
Byrum	Gougeon	Miller	Smith, A.
Cherry	Hammerstrom	Murphy	Smith, V.
DeBeaussaert	Hart	North	Steil
DeGrow	Hoffman	Peters	Stille
Dingell	Jaye	Rogers	Van Regenmorter
Dunaskiss	Johnson	Schuette	Vaughn
Emerson	Koivisto	Schwarz	Young
Emmons	Leland		

Nays—0

Excused—0

Not Voting—0

In The Chair: Schwarz

Senator Rogers moved that the bill be given immediate effect.

The motion prevailed, 2/3 of the members serving voting therefor.

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

"An act to provide for the assessment of rights and interests, including leasehold interests, in property and the levy and collection of taxes thereon, and for the collection of taxes levied; making such taxes a lien on the property taxed, establishing and continuing the lien, providing for the sale and conveyance of property delinquent for taxes, and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; to provide for the establishment of a delinquent tax revolving fund and the borrowing of money by counties and the issuance of notes; to define and limit the jurisdiction of the courts in proceedings in connection therewith; to limit the time within which actions may be brought; to prescribe certain limitations with respect to rates of taxation; to prescribe certain powers and duties of certain officers, departments, agencies, and political subdivisions of this state; to provide for certain reimbursements of certain expenses incurred by units of local government; to provide penalties for the violation of this act; and to repeal certain acts and parts of acts in anywise contravening any of the provisions of this act,".

The Senate agreed to the full title.

The following bill was read a third time:

House Bill No. 4509, entitled

A bill to create an urban homestead program for multifamily public housing; to provide that certain local governmental units and public housing entities create and administer urban homestead programs for multifamily public housing; to prescribe the powers and duties of certain state and local governmental units and public housing entities; and to provide for the disposition of personal and real property.

The question being on the passage of the bill,

EXHIBIT H

LEXSEE 2005 MICH APP LEXIS 2050

STERLING BANK & TRUST, F.S.B., Plaintiff-Appellant, v CITY OF PONTIAC, Defendant-Appellee.

No. 249689

COURT OF APPEALS OF MICHIGAN

2005 Mich. App. LEXIS 2050

August 23, 2005, Decided

NOTICE: [*1] THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

PRIOR HISTORY: Oakland Circuit Court. LC No. 2002-042097-CZ.

DISPOSITION: Affirmed.

JUDGES: Before: Wilder, P.J., and Sawyer and White, JJ.

OPINION: PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition under *MCR 2.116(C)(10)*. We affirm.

Upon investigation by its building and safety engineer inspector, defendant determined that a building owned by plaintiff was open to trespass and the elements, and that there was trash and junk on the property. Further investigation revealed that a building permit issued pertaining to the property had expired three months earlier. Thus, pursuant to and in compliance with *MCL 125.540(5)*, n1 defendant sent to plaintiff by certified mail a notice that there was a pending hearing to determine whether the building at issue could be lawfully demolished as a "dangerous building." The notice was mailed to Todd Lynn Shull, c/o Sterling Savings Bank, P.O. Box 578, Ortonville, MI 48462, the owner(s) as indicated on **[*2]** the tax assessor's rolls. In further compliance with *MCL 125.540(5)*, defendant also posted a notice of dangerous and unsafe building on the property premises. Plaintiff did not appear at the scheduled hearing, and the hearing officer determined that the building should be repaired and made safe within 30 days or the building should be demolished. After 30 days had passed, notice to show cause why the building should not be made safe or demolished was provided by certified mail and posted, again in compliance with the statute. Again, plaintiff did not appear at the hearing, and the Pontiac City Council determined that the building should be demolished. The structure was subsequently demolished.

n1 *MCL 125.540(5)* provides in pertinent part:

> The *notice* shall be in writing and *shall be served* upon the person to whom the notice is directed either personally or *by certified mail,* return receipt requested. *addressed to the owner or party in interest at the address shown on the tax records*. If a notice is served on a person by certified mail, a copy of the notice shall also be posted upon a conspicuous part of the building or structure. The notice shall be served upon the owner or party in interest at least 10 days before the date of the hearing included in the notice. [Emphasis added].

[*3]

Plaintiff brought this action alleging an unconstitutional taking of its property after defendant demolished a home on the property. Plaintiff's assertion that there was an unconstitutional taking primarily rests on the fact that it did not receive actual notice of the pending demolition of the building despite its status as the owner of the property with a recorded interest. Plaintiff also contends

that defendant's failure to provide it with actual notice before the building was demolished was a violation of procedural due process. We disagree.

In *Smith v Cliffs on the Bay Condo Ass'n, 463 Mich. 420, 422-431; 617 N.W.2d 536 (2000)* (*Smith II*), Ypsilanti Township sent notice of a pending tax sale to the property owner, a condominium association. There was no dispute that the notice sent to the association by the township was in compliance with the notice procedures established by the Legislature in the General Property Tax Act, *MCL § 211.1 et seq. Id.* at 429-430. There was also no dispute that the association had changed its address on file with the State of Michigan Corporations and Securities **[*4]** Bureau to an address different than the address on file with the township, and that because there was apparently no requirement that the association change its address on file with the township, it did not do so. *Id.* at 423. It was further undisputed that the notice to the association in fact went to the address that was on record with the township. *Id.* at 424. The association did not receive actual notice of the pending tax sale, and the tax sale proceeded as scheduled. *Id.* In reversing the holding of this Court n2 that the failure to provide actual notice to the association in advance of the sale was a violation of due process, our Supreme Court concluded that because the statute, providing that mailed notice of a tax sale is to be made to the owner's last known address, was fully complied with by the township when it mailed notice to the former address of the association, the notice was appropriate and sufficient to meet constitutional standards. *Id.* at 429-430.

n2 *Smith v Cliffs on the Bay Condo Ass'n, 226 Mich. App. 245; 573 N.W.2d 296 (1997)* (*Smith I*), vacated *459 Mich. 925 (1998).*

[*5]

The Supreme Court noted in *Smith II* that *Dow v Michigan, 396 Mich. 192; 240 N.W.2d 450 (1976),* was inappropriately relied on by this Court in *Smith I* for the proposition that the state must use 'such means "as one desirous of actually informing [the property owner] might reasonably adopt" to notify the owner of the pendency of the proceedings.' *Smith II, supra* at 425 (brackets in original). In *Dow*, the issue before the Supreme Court was whether notice by publication was sufficient, when notice by mail was authorized by the statute in effect at the time and the record showed no effort by the state to provide notice to the property owner by mail. *Dow, supra at 207.* In *Smith II*, however, the township had availed itself of the notice by mail provision of the statute by mailing notice to the association at its last known address, and the Supreme Court concluded that this notice to the association was constitutionally sufficient even if the association did not actually receive notice. *Smith II, supra* at 429. Importantly, the Supreme Court concluded that contrary to the finding of this Court in *Smith I* **[*6]** , the fact that the one of the mailings to the association was returned as undeliverable did not impose on the township "the obligation to undertake an investigation to see if a new address for the association could be located" because "the courts lack the authority to create new notice requirements." *Id.* at 429-430. Rather, "for due process purposes, the focus must be on the constitutional adequacy of the statutory procedure and not on whether some additional effort in a particular case would have led to a more certain means of notice." *Id.* at 431.

More recently, in *Republic Bank v Genesee County Treasurer, 471 Mich. 732, 740-741; 690 N.W.2d 917 (2005),* the Supreme Court reaffirmed its holding in *Smith II* and concluded that "when an address has been provided on the relevant document and that document address has not been changed," the mailing of notice of tax foreclosure proceedings to the address provided by the document satisfies due process concerns, even if the municipality might be able to find an updated address upon further investigation.

In the present case, the defendant indisputably complied with *MCL 125.540(5)* **[*7]** by sending notice, to the address of the interested parties last on file with the township, of the pending hearing to determine whether the home at issue could be lawfully demolished as a "dangerous building." The fact that plaintiff did not receive actual notice is insufficient by itself to demonstrate that the statutory procedures for providing notice were inadequate or constitutionally insufficient, and plaintiff makes no other showing why the notice provided under the statute violated its due process rights. We therefore reject plaintiff's effort to have this Court impose on defendant "the obligation to undertake an investigation to see if a new address for the [plaintiff] could be located," n3 *Smith II, supra* at 429, before it acts to demolish a structure under the statute.

n3 Presumably, defendant would have to conduct this investigation by examining the recorded interests on file with the register of deeds.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Helene N. White

DISSENTBY: David H. Sawyer

DISSENT: [*8]

SAWYER, J. (*dissenting*).

I respectfully dissent.

Articles IV and V of the Michigan Housing Law, *MCL 125.401 et seq.*, establish requirements for building maintenance and improvements, while article VII governs enforcement of those requirements. In particular, *MCL 125.538* and *MCL 125.539* prohibit and define "dangerous building." Notice of a hearing to determine whether a structure is a "dangerous building" is governed by *MCL 125.540(2)* (" § 140"), which states:

> The notice shall be served on the owner, agent, or lessee that is registered with the enforcing agency under section 125[, *MCL 125.525*]. If an owner, agent, or lessee is not registered under section 125, the *notice shall be served on each owner of or party in interest in the building or structure in whose name the property appears on the last local tax assessment records*. [Emphasis added.] n1

> n1 Plaintiff does not claim to have registered with the enforcing agency, i.e., defendant's building department. Under the plain language of § 125(2), only "the owners of a multiple dwelling or rooming house containing units which will be offered to let, or to hire, for more than 6 months of a calendar year" have an obligation to register.

[*9]

Plaintiff concedes that § 140(2), by its express terms, only requires notice to the taxpayer of record, which in this case was Shull, the land contract vendee. Nonetheless, plaintiff argues that because it had a significant, recorded property interest in the property, defendant's demolition of the property without notice to it violated its right to procedural due process. I agree.

The determination whether there has been a violation of procedural due process requires a dual inquiry: "(1) whether a liberty or property interest exists which the state has interfered with, and (2) whether the procedures attendant upon the deprivation were constitutionally sufficient." *Jordan v Jarvis, 200 Mich. App. 445, 448; 505 N.W.2d 279 (1993).*

A titleholder of record such as plaintiff has a significant interest in property and, therefore, is entitled to notice of proceedings affecting the property. *Dow v Michigan, 396 Mich. 192, 202-204; 240 N.W.2d 450 (1976).* As our Supreme Court in *Dow* stated:

> Real property interests of record are readily identifiable. Accordingly, the titleholder, Smith, was entitled to have the state **[*10]** employ such means "as one desirous of actually informing [her] might reasonably adopt" to notify her of the pendency of the proceedings. *Mullane v Central Hanover Bank & Trust Co [339 U.S. 306, 315; 70 S. Ct. 652; 94 L. Ed. 865 (1950)].*
>
> It does not appear whether the land contract purchaser's interest of the Dows was of record. Ordinarily, a land contract purchaser of a residence is in actual possession and readily identifiable. The Dows were not in possession. The typical land contract requires the purchaser to pay taxes. It does not appear whether the tax assessor or treasurer were aware of the Dows' interests, or indeed, to whom tax bills had been sent. If their interests were of record or if the assessor or treasurer was aware of their interests, they too were entitled to have the state employ such means "as one desirous of actually informing [them] might reasonably adopt" to notify them of the pendency of the proceedings. [*Id.* at 210211 .]

The Court stated that, while notice by mail is adequate, "mailed notice must be directed to an address reasonably calculated to reach *the person entitled to notice*." *Dow, supra at 211* **[*11]** (emphasis added). "It would satisfy constitutional requirements if the state were to adopt a procedure providing for (i) ordinary mail notice before sale to the person to whom tax bills have been sent and to 'occupant,' and (ii) after sale to the state, formal notice to all owners of significant property interests of the constitutionally required opportunity for hearing and redemption." n2 *Id. at 212.* The Court further stated that "the burden required by the Constitution is manageable." *Id.*

> n2 Plaintiff raises an issue concerning the timing of the notice. *Dow* indicates that, "putting aside the questions that might arise if the cost to the owner of redeeming after a sale were substan-

tially in excess of the pre-sale cost of curing a delinquency," *post-deprivation* notice would be sufficient for those having a recorded ownership interest in the property. *Dow, supra at 212.* However, *Dow* recognized that additional due process concerns might arise in other cases. In contrast with the tax redemption involved in *Dow*, this case involves the actual destruction of a structure owned by plaintiff. Thus, it is apparent that post-deprivation notice would be inadequate to allow plaintiff to protect its interests. See *United States v James Daniel Good Real Property, 510 U.S. 43, 54-56; 114 S. Ct. 492; 126 L. Ed. 2d 490 (1993)* (absent exigent circumstances, the seizure of real estate without prior notice is unconstitutional); see also *Himes v Flint, 38 Mich. App. 308, 315; 196 N.W.2d 321 (1972).* In this case, however, *no* notice was provided to plaintiff.

[*12]

Dow supports the conclusion that because plaintiff had a significant, recorded interest in the property in question, it was entitled to notice. Moreover, *Dow* recognizes that not all such interests will be listed in a municipality's tax rolls. Here, plaintiff's interest was recorded and, as observed in *Dow*, could easily be identified, particularly considering that plaintiff was also listed as an interested party in defendant's tax rolls. Therefore, although the notice provided by defendant complied with § 140, it was not constitutionally adequate with respect to plaintiff's recorded property interest.

The majority's reliance on *Smith v Cliffs On The Bay Condominium Ass'n, 463 Mich. 420; 617 N.W.2d 536 (2000),* to distinguish *Dow* is misplaced. First, the Court concluded that the notice method followed was in compliance with *Dow* and therefore "constitutionally sound." *Smith, supra* at 428-429. The majority is correct that *Smith* directs the focus to whether the statutory procedure is constitutionally adequate rather than whether notice in a particular case was received and if more could have been done in such a case to make **[*13]** actual receipt more certain. *Id.* at 431. But this does not change the basic requirement, as recognized by *Dow, supra at 211,* that the notice must be "reasonably calculated to reach the person entitled to notice."

Smith, as well as another case relied upon by the majority, *Republic Bank v Genesee Co Treasurer, 471 Mich. 732; 690 N.W.2d 917 (2005),* dealt with the question whether the governmental entity was obligated to seek out a more up-to-date address to which to send notice. The case at bar, however, is not concerned with whether defendant could rely upon the address appearing on the tax rolls as being the correct address to send notice to plaintiff. Rather, in this case notice was never sent to plaintiff. As actual owner of the property, plaintiff was entitled to notice.

To the extent that *MCL 125.540(2)* provides that notice only needs to be sent to the taxpayer of record in a "dangerous building" action and not to actual owners of record, I would hold that the statute fails to meet the minimum constitutional requirements to satisfy procedural due process requirements as discussed in *Dow.*

For **[*14]** these reasons, I would reverse.

/s/ David H. Sawyer

EXHIBIT I

LEXSEE 2004 MICH. APP. LEXIS 771

AZIZ KHONDKER, Plaintiff-Appellant, v WAYNE COUNTY TREASURER, Defendant-Appellee.

No. 246296

COURT OF APPEALS OF MICHIGAN

2004 Mich. App. LEXIS 771

March 23, 2004, Decided

NOTICE: [*1] THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

PRIOR HISTORY: Wayne Circuit Court. LC No. 02-234046-CZ.

DISPOSITION: Affirmed.

JUDGES: Before: Zahra, P.J., and Saad and Schuette, JJ.

OPINION: PER CURIAM.

Plaintiff appeals as of right the trial court's order denying his motion for a preliminary injunction regarding the sale of real property. We affirm.

I. Facts and Procedure

On June 14, 2001, defendant filed a petition for the foreclosure of approximately eight thousand properties for the failure to pay property taxes for the year 1999. One of the properties included in the petition was 2001 East Grand Boulevard in Detroit, which was owned by Kevin Pitts. Plaintiff, who was a former owner of the property and claims that he again acquired interest in the property by paying taxes, cleaning, and removing debris from the property, alleges that defendant did not provide any notice of foreclosure to Pitts or him. However, defendant's process server filed an affidavit stating that she personally visited the property, which was unoccupied when she arrived. The process server stated that, in accordance [*2] with the foreclosure notice provisions of *MCL 211.78i(3)*, she posted a notice to show cause hearing, the foreclosure petition, and other relevant documents on the property in a conspicuous manner. She also took a photograph of the house after she posted the notice. On March 4, 2002, the circuit court entered a judgment of foreclosure for approximately five thousand properties, including 2001 East Grand Boulevard. In the judgment, the trial court found that defendant provided proper notice and opportunity to be heard to all parties interested in the forfeited properties. When plaintiff subsequently approached defendant to pay the balance of unpaid taxes on the house, he was told that the property had been foreclosed and would be sold at a public auction between September 25, 2002, and September 27, 2002.

On September 25, 2002, plaintiff filed a complaint against defendant, seeking a preliminary injunction and an ex parte temporary restraining order preventing defendant from placing his foreclosed property in a public auction and compelling defendant to accept full payment from plaintiff for the delinquent taxes. The trial court treated plaintiff's complaint [*3] as a motion and held hearings regarding the matter, where it found that defendant had complied with the forfeiture notice requirements of *MCL 211.78*. The court explained that in *Smith v Cliffs on the Bay Condo Ass'n, 463 Mich. 420; 617 N.W.2d 536 (2000)*, on remand *245 Mich. App. 73; 626 N.W.2d 905 (2001)*, the Supreme Court determined that the prior statutory notice requirements were constitutional, and because the statutory notice requirements had been expanded since the Supreme Court decision, the present notice requirements were sufficient to satisfy due process. The court also rejected plaintiff's argument that the notice statute was unconstitutional as applied to this case because the legislative purpose of the statute was frustrated. Finally, the court added that equitable relief was not available in a foreclosure context. The court then entered an order denying plaintiff's motion for a preliminary injunction. The court subsequently denied plaintiff's motion for reconsideration.

II. Analysis

Plaintiff argues that this Court should set aside the auction sale of his property and award the property [*4]

to him, because defendant did not give him proper statutory notice of the foreclosure proceedings and thus violated his right to due process. In response, defendant argues that this Court lacks jurisdiction to decide plaintiff's appeal, because plaintiff is not appealing the circuit court's final order.

MCL 211.78k(7) provides for an appeal of a judgment of foreclosure:

> The foreclosing governmental unit or a person claiming to have a property interest under section 78i in property foreclosed under this section may appeal the circuit court's order or the circuit court's judgment foreclosing property to the court of appeals. An appeal under this subsection is limited to the record of the proceedings in the circuit court under this section and shall not be de novo. The circuit court's judgment foreclosing property shall be stayed until the court of appeals has reversed, modified, or affirmed that judgment. If an appeal under this subsection stays the circuit court's judgment foreclosing property, the circuit court's judgment is stayed only as to the property that is the subject of that appeal and the circuit court's judgment foreclosing other property that **[*5]** is not the subject of that appeal is not stayed. To appeal the circuit court's judgment foreclosing property, a person appealing the judgment shall pay to the county treasurer the amount determined to be due to the county treasurer under the judgment within 21 days after the circuit court's judgment is entered, together with a notice of appeal. If the circuit court's judgment foreclosing the property is affirmed on appeal, the amount determined to be due shall be refunded to the person who appealed the judgment. If the circuit court's judgment foreclosing the property is reversed or modified on appeal, the county treasurer shall refund the amount determined to be due to the person who appealed the judgment, if any, and retain the balance in accordance with the order of the court of appeals. n1

> n1 This version of *MCL 211.78k* was amended by Pub Act 2003, No. 263, imd eff January 5, 2004.

Here, plaintiff did not follow the appeal procedures set forth in *MCL 211.78k(7)* **[*6]** , but instead filed the complaint in this suit, which is essentially an original action attempting to enjoin enforcement of the judgment of foreclosure. Plaintiff's original action in this case amounts to a collateral attack on the judgment of foreclosure. "[A] decision of a court having jurisdiction is final and cannot be collaterally attacked." *In re Waite, 188 Mich. App. 189, 197; 468 N.W.2d 912 (1991).* Plaintiff does not allege that the circuit court lacked jurisdiction to enter the judgment of foreclosure, so he may not attack the judgment by bringing an original suit. *SS Aircraft Co v Piper Aircraft Co, 159 Mich. App. 389, 393; 406 N.W.2d 304 (1987).*

In regard to whether plaintiff could properly file an original action against defendant for failure to provide notice of foreclosure, the General Property Tax Act, *MCL 211.1 et seq.*, provides:

> The failure of this state or a political subdivision of this state to follow a requirement of this act relating to the return, forfeiture, or foreclosure of property for delinquent taxes shall not be construed to create a claim or cause of action against **[*7]** this state or a political subdivision of this state unless the minimum requirements of due process accorded under the state constitution of 1963 or the constitution of the United States are violated. [*MCL 211.78(2).*]

In *Smith, supra* at 428-429, our Supreme Court held that the "extensive set of procedures for notice of the steps in the tax sale process . . . meet the requirements set forth in *Dow [v Michigan, 396 Mich. 192; 240 N.W.2d 450 (1976)]* and thus provide a constitutionally sound procedure for sale of property because of the nonpayment of taxes." Plaintiff does not argue that the postSmith amendments to the General Property Tax Act caused the statutory notice requirements to become constitutionally inadequate. n2 Here, the trial court found that defendant had complied with the notice requirements of *MCL 211.78* because defendant's process server filed an affidavit stating that she followed the statutory requirements for notice under *MCL 211.78i(3).* Therefore, plaintiff's present suit against defendant could not permissibly challenge the judgment of foreclosure **[*8]** or the adequacy of notice of foreclosure.

> n2 In amending the General Property Tax Act in 2003, the Legislature stated, "This amendatory act is not intended to and shall not be construed to modify or alter the ruling of the Michigan Supreme Court in *Smith v Cliffs on the Bay Condominium Association*, docket no. 111587." *2003 PA 263.*

Affirmed.

/s/ Brian K. Zahra

/s/ Henry William Saad

/s/ Bill Schuette

EXHIBIT J

LEXSEE 2003 US APP. LEXIS 14246

JOHNNY HOWARD; SALLY HOWARD; UNITED MANAGEMENT CO., L.L.C. individually and in a representative capacity, Plaintiffs - Appellants v. CITY OF DETROIT; COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT OF THE CITY OF DETROIT; STATE OF MICHIGAN; JOHN DOES 1-15, being unknown property owners who acquired certain real estate from the above parties, Defendants - Appellees

No. 01-2589

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

73 Fed. Appx. 90; 2003 U.S. App. LEXIS 14246

July 14, 2003, Filed

NOTICE: [**1] NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 28(g) LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 28(g) BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

PRIOR HISTORY: ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. 01-60106. Battani. 10-15-01.

DISPOSITION: Affirmed.

COUNSEL: For JOHNNY HOWARD, SALLY HOWARD, UNITED MANAGEMENT CO., L.L.C., Plaintiffs - Appellants: Stephen F. Wasinger, Judith Sawicki, Wasinger, Kickham & Hanley, Royal Oak, MI.

For CITY OF DETROIT, COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT OF THE CITY OF DETROIT, Defendants - Appellees: Joanne D. Stafford, City of Detroit Law Department, Jane E. Kent, Detroit City Law Department, Detroit, MI.

For PEOPLE OF THE STATE OF MICHIGAN, Defendant - Appellee: Kevin T. Smith, Asst. Attorney Gen., Office of the Attorney General, Lansing, MI.

JUDGES: Before: MOORE and ROGERS, Circuit Judges; and HOOD, District Judge. * MOORE, Circuit Judge. Concurs in result only.

* The Honorable Joseph M. Hood, United States District Judge for the Eastern District of Kentucky, sitting by designation.

[**2]

OPINIONBY: ROGERS

OPINION:

[*91] ROGERS, Circuit Judge. Plaintiffs, Johnny Howard, Sally Howard, and United Management Co., L.L.C. ("United"), appeal from the district court's order granting summary judgment to the defendants on the grounds that plaintiffs' claims are barred by the applicable statute of limitations. Plaintiffs' complaint alleged that a property lot was transferred pursuant to a 1983 tax sale in violation of the *Michigan General Property Tax Act, and* that the transfer amounted to a taking in violation of the Michigan and United States Constitutions. The plaintiffs are seeking damages, the opportunity to redeem the property from the 1983 tax sale. and title to the property. These claims are barred by the applicable statutes of limitations, and we therefore affirm the district court's dismissal of this case.

I. BACKGROUND

This appeal concerns a parcel of property legally described as: State of Michigan, [*92] County of Wayne, City of Detroit, Brush Subdivision LI P253, Block 3, Lot 15, Ward 1, Item 653, which we shall refer to as "Lot 15." On December 15, 1978, Johnny Howard entered into a land contract (the "Land Contract") to purchase Lot 15, along with Lots 13 and 14 which are adjacent, [**3] and this interest was recorded on January 16, 1979. The seller in the Land Contract is not a party to

this dispute. Lots 13, 14, and 15 are commonly known as "234 Alfred," and an apartment building is situated on Lots 13 and 14. Lot 15 is vacant and, according to the plaintiffs, is used for parking by the occupants of 234 Alfred.

Under the Land Contract certain responsibilities were split between the parties. Pertinent to this appeal is Section 2(e), which obligated the seller to pay "taxes, assessments when due and before any penalty attaches, and submit receipts therefor to the Purchaser upon demand," as well as Section 1(c), which obligated the seller to convey title to Johnny Howard by warranty deed and free of all encumbrances.

In 1980, state real property taxes on Lot 15 went unpaid, and this nonpayment resulted in the inclusion of Lot 15 in the 1983 annual tax sale in Wayne County Circuit Court. This sale was authorized under the *General Property Tax Act* (the "GPTA"), 1893 Pub. Acts 206 as amended. *Mich. Comp. Laws § 211.1 et seq.* Due to the lack of private bidders, Lot 15 was bid to the State of Michigan. Because the state bid was not redeemed prior to May 1, 1984, nor **[**4]** purchased by a private purchaser, title vested in the State of Michigan on that date subject to certain rights of redemption found in *Sections 131c and 131e* of the GPTA. *See Mich. Comp. Laws § § 211.84*; *211.74*; *211.67*; *211.131c*; *211.131e.*

On June 1, 1984, Lot 15 was deeded to the State of Michigan by the State Treasurer. Lot 15 was then subject to another redemption period that extended until November 6, 1984. *Mich. Comp. Laws § 211.131c.* On September 5, 1984, Johnny Howard executed a quitclaim deed for Lots 13, 14, and 15 to Sally Sneed (now Sally Howard), and this deed was recorded on September 6, 1984. Sally Sneed, now plaintiff Sally Howard, thereby became the only plaintiff with any record interest. Nevertheless, Lot 15 was not redeemed prior to November 6, 1984, so on November 29, 1984, the deed to the State was recorded.

In early June of 1985, notice of a show cause hearing to be held on June 24, 1985, regarding Lot 15 was sent by registered mail, return receipt requested, to: Sally Snead, 8711 Intervale, Detroit, MI 48238. This notice was sent pursuant to *Mich. Comp. Laws § 211.131e*, which required that a show cause hearing be held for tax foreclosure sales, that notice **[**5]** of the hearing be sent to owners of a "significant property interest," and that those owners have until 30 days after the hearing to redeem the property. On June 11, 1985, the notice was delivered and signed for by a "Sallie Snead." The Michigan Treasury Department no longer has copies of the notice or the titlework on which the notice was based, because that documentation was destroyed in the normal course of business under the Department's routine record retention schedule. The Treasury Department retains notices and titlework for six years after the show cause hearings. No one appeared at the show cause hearing held on June 24, 1985, and no redemption was made within 30 days after the hearing.

Lot 15 was deeded by the Michigan Department of Natural Resources ("MDNR") to the City of Detroit (City), Community and Economic Development **[*93]** Department, by quitclaim public use deed on October 16, 1985. The MDNR was required to inspect the property pursuant to *Mich. Comp. Laws 211.131c(4)*, but the MDNR no longer has any records of an inspection because the records were destroyed in the normal course of business. The MDNR only retains documentation in support of property deeded by public use **[**6]** deed for 10 years. The MDNR's deed to the City was recorded on December 4, 1985.

Johnny Howard completed payment on the Land Contract, and on November 21, 1989, the seller conveyed Lots 13, 14, and 15 to Johnny Howard by warranty deed. On January 2, 1996, Johnny and Sally Howard conveyed Lots 13, 14, and 15 to their property management company, plaintiff United, by quitclaim deed. This deed was recorded on February 24, 1996.

In September of 1999, the Howards received notice from the seller of the Land Contract that Lots 13 and 14 were proposed for sale by the City for unpaid taxes. The Howards then paid the taxes due on Lots 13 and 14, and attempted to record the warranty deed of November 21, 1989. The Wayne County Register of Deeds refused to record the warranty deed because the City had already recorded an interest in Lot 15 under the 1985 deed from the MDNR. The Howards offered to pay the taxes and other charges due on Lot 15, but this offer was refused.

The Howards filed suit to quiet title to Lot 15 (as well as the property of any similarly situated class members) on February 22, 2001, in the Wayne County Circuit Court. Plaintiffs also sought damages, alleging violations of **[**7]** the GPTA and a taking in violation of the Michigan and United States Constitutions. The defendants include the City of Detroit and its Community and Economic Development Department (the "City"), the State of Michigan, and defendants Does 1-15. In paragraph 13 of the complaint, the defendants Does are identified as current owners of property within that area of Detroit covered by the class allegations who acquired their interests in that property from tax lien foreclosures dating from end of World War II to the present. The City and the State removed the action to the United States District Court for the Eastern District of Michigan on the basis of federal subject matter jurisdiction.

The State filed a motion to dismiss pursuant to *Fed. R. Civ. P. 56(c)*, alleging that the complaint is time-

barred by any of several statutes of limitations. The district court, ruling from the bench, dismissed the complaint as barred by the six month statute of limitations found in *Mich. Comp. Laws § 211.431*, and judgment was entered on October 12, 2002. The complaint was dismissed prior to the filing of a motion to certify a class.

II. ANALYSIS

A. Standard of Review

A court of appeals reviews **[**8]** a decision to grant summary judgment *de novo. Tinker v. Sears. Roebuck & Co., 127 F.3d 519, 521 (6th Cir. 1997)*. Summary judgment is only appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." *Fed. R. Civ. P. 56(c)*. In summary judgment the facts as well as any inferences that can be drawn from them must be viewed in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986)*.

[*94] B. Federalism Considerations

This case deals with detailed provisions of state property law, perhaps best resolved, in the first instance at least, by the state courts. We deal first with whether any federalism principles precluded resolution of this case by the district court.

Neither defendant has argued that this action is not properly before this court due to the Tax Injunction Act, *28 U.S.C. § 1341*, or related principles of comity and federalism. Indeed, the **[**9]** City removed this action to federal court, and the State joined in the removal. It is nevertheless possible that--to the extent that plaintiffs are requesting non-injunctive relief--the comity concerns described by the Supreme Court in *Fair Assessment in Real Estate Association v. McNary, 454 U.S. 100, 70 L. Ed. 2d 271, 102 S. Ct. 177 (1981)* (*"FAIR"*), precluded the relief sought in this case. n1 However, given that defendants removed this action to federal court, they have waived such arguments. *Cf. Lapides v. Bd. of Regents, 535 U.S. 613, 152 L. Ed. 2d 806, 122 S. Ct. 1640 (2002)*.

n1 *The Tax Injunction Act* (the "Act") provides that "the district courts shall not enjoin. suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." *28 U.S.C. § 1341*. The Act reflects "the fundamental principle of comity between federal courts and state governments that is essential to 'Our Federalism,' particularly in the area of state taxation." *FAIR, 454 U.S. at 103*. Following the passage of the *Tax Injunction Act*, the Supreme Court decided *Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293, 87 L. Ed. 1407, 63 S. Ct. 1070 (1943)*, in which it reasoned that, although declaratory relief was not expressly prohibited by the *Tax Injunction Act*, the "considerations which have led federal courts of equity to refuse to enjoin the collection of state taxes, save in exceptional cases, require a like restraint in the use of the declaratory judgment procedure." *Id. at 299*. The "considerations" discussed in *Huffman,* like those underlying the *Tax Injunction Act*, were principles of federalism and comity. *FAIR at 111*.

In *FAIR,* the principles of federalism and comity in relation to state tax systems were held to require that *§ 1983* actions also be decided by the states so long as the states provide a "plain, adequate, and complete remedy". *454 U.S. at 116*. The Court reasoned that a recovery of damages under *§ 1983* would first require a determination of the constitutionality of a state tax plan, and therefore would raise the same concerns about federalism and comity as those articulated in *Huffman Id. at 115*.

The Supreme Court's decisions in both *Huffman* and *FAIR* were based not on a lack of subject matter jurisdiction, but on principles of federalism and comity enforceable in equity. An objection to the equity jurisdiction of a court, unlike subject matter jurisdiction, can be waived. *See Atlas Life Ins. Co. v. W. I. Southern, Inc., 306 U.S. 563, 568 n.1, 83 L. Ed. 987, 59 S. Ct. 657 (1939)* ("Unlike the objection that the court is without jurisdiction as a federal court, the parties may waive their objections to the equity jurisdiction by consent or by failure to take it seasonably." (citations omitted)).

[10]**

To the extent that plaintiffs are seeking injunctive relief, n2 it may be argued that the *Tax Injunction Act*, as a limit on subject matter jurisdiction, cannot be waived. *See Louisville & Nashville R.R. Co. v. Mottley, 211 U.S. 149, 53 L. Ed. 126, 29 S. Ct. 42 (1908)* (subject matter jurisdiction cannot be waived); *see also Ku v. Tennessee, 322 F.3d 431, 433 (6th Cir. 2003)* ("A federal court's original jurisdiction is created by statute enacted under Article III, which functions as a fundamental limit on federal power. Because it is a fundamental 'subject mat-

ter' limitation on federal judicial power, a defect in a federal court's original jurisdiction need not be asserted by any party, cannot be waived by any party, and **[*95]** must be raised by a Court *sua sponte* when noticed."). The Supreme Court has recently held that a state's sovereign immunity, which is enforced through jurisdictional provisions in Article III and the *11th Amendment of the Constitution*, can be waived by state removal of an action to federal court. *Lapides, 535 U.S. 613, 152 L. Ed. 2d 806, 122 S. Ct. 1640 (2002)*. This holding arguably raises the question whether the deference to state authority codified in the jurisdictional provisions **[**11]** of the *Tax Injunction Act* can also be waived by removal. In light of defendants' continued acceptance of federal jurisdiction, and in light of our ultimate disposition of this case, it is not necessary for us to resolve that difficult question. It is sufficient for us to indicate that any injunctive relief requested in this case may have been beyond the jurisdictional power of the district court.

n2 The complaint asks for orders to be entered against the defendants but does not specifically request injunctive relief.

C. Michigan's Real Property Tax Foreclosure Process

The process for enforcing Michigan's real property tax laws is set forth in the GPTA, 1893 Mich. Pub. Acts 206, as amended, *Mich. Comp. Laws § 211.1 et seq.* An entirely new foreclosure process applicable to taxes for 1999 and subsequent tax years, was adopted as 1999 Mich. Pub. Acts 123. n3

n3 This new process is not at issue in this appeal.

[12]**

1. Pre-Sale Process

Property is assessed each tax year based on the taxable status of the property on December 31 of the preceding year. Taxes become a lien on the property on December 1 of the tax year. *Mich. Comp. Laws § 211.40.* Taxes not paid by March 1 of the year following the tax year are delinquent and tax rolls are sent to the county treasurer for collection of unpaid taxes. *Mich. Comp. Laws § 211.55.*

Within 120 days after March 1 of the year following the tax year, the county treasurer sends notice of the delinquency to the taxpayers shown on the current land file supplied by the local assessor. n4 *Mich. Comp. Laws § 211.57(2)*. The county treasurer mails a second notice to the taxpayer within 120 days after March 1 of the second year following the tax year. using the land file supplied by the local assessor. *Mich. Comp. Laws § 211.57(3).*

n4 This is important to note, because, as will become clear in our analysis, notice is only required to be sent under these sections *to the person to whom the tax is assessed,* which in this case was the seller in the Land Contract, not any of the plaintiffs.

[13]**

2. The Annual Tax Sale

In the third year following the tax year, tax liens are offered at the annual tax sale held in each county. *Mich. Comp. Laws § 211.60.* The action is commenced by the filing of a petition on behalf of the Michigan State Treasurer in the circuit court in the county in which the lands are situated. *Mich. Comp. Laws § 211.61.* Upon the filing of the petition, *Section 61a of the GPTA. Mich. Comp. Laws § 211.61a*, requires the county treasurer to notify persons against whom delinquent taxes are assessed, according to the records of the county treasurer's office, of the impending tax sale. *Section 61a* also states that "failure to receive or serve the notice shall not invalidate the proceedings taken under the state treasurer's petition and decree of the circuit court in foreclosure and sale of the lands for taxes." *Mich. Comp. Laws § 211.61a.*

Additionally, notice is given by newspaper publication. *Mich. Comp. Laws § § 211.62, 211.66.* The county treasurer **[*96]** also sends notice not later than 30 days prior to sale, addressed to "occupant" at the street address of each parcel included in the sale if notice has not earlier been sent to that address or if notice **[**14]** sent to such address was returned. *Mich. Comp. Laws § 211.61b.*

Following these notices, a hearing is held in the circuit court at which time any person having an interest in a parcel of property may object to the inclusion of a tax lien on the property in the tax sale. In response to objections made at the hearing, the court may exclude parcels from the sale. Following the hearing, the circuit court issues its order decreeing the taxes valid and ordering sale of the property at the annual tax sale if not redeemed prior to the sale date. The judgment amount for which the lien is offered at the sale is the total of the unpaid taxes for the tax year and any prior years, plus a four percent administration fee. a ten dollar expense of sale

fee. and interest on the unpaid taxes at the rate of 1.25 percent per month back to the month of March when the taxes first became delinquent.

The tax sale is held on the first Tuesday in May of each year. *Mich. Comp. Laws § 211.70.* The successful bidder is issued a tax certificate. Any lien not purchased at the tax sale is automatically bid to the State of Michigan. *Id.* State bids may be purchased "over the counter" from the Department of Treasury **[**15]** at any time prior to April 20 of the year following the sale. The purchaser receives a tax certificate which is treated the same as certificates issued upon purchase at the tax sale. *Mich. Comp. Laws § 211.84.*

3. Post-Sale Redemption Pursuant to Section 74

Owners have until the first Tuesday in May of the year following the tax sale in which to redeem parcels from the preceding year's tax sale, by payment of the judgment amount plus interest at 1.25 percent per month or portion thereof under *Section 74 of the GPTA. Mich. Comp. Laws § 211.74.* Not later than 120 days before the expiration of the redemption period, the county treasurer must send another notice to each person who, according to the records of the county treasurer, has an interest in a parcel of land offered at the tax sale and not yet redeemed. *Mich. Comp. Laws § 211.73c(1). Section 73c* also provides that "failure to receive or serve the notice or a defect in the notice does not invalidate the proceedings taken under the state treasurer's petition and order of the circuit court for sale of a tax lien on the property for taxes." *Mich. Comp. Laws § 211.73c(6).*

4. Redemption of Parcels Bid to the State **[**16]**

Title vests in the state on the first Tuesday in May of the year following the tax sale if not redeemed prior thereto. *Mich. Comp. Laws § 211.67.* Once title is vested in the state, owners have an additional right of redemption pursuant to *Section 131c of the GPTA, Mich. Comp. Laws § 211.131c*, extending to the day before the first Tuesday in November following vesting of title in the state, i.e., 18 months following the tax sale. n5 Redemption is by **[*97]** payment of the judgment amount plus interest at 1.25 percent per month, all other delinquent taxes, plus accrued interest and penalties and an additional processing fee of fifty dollars per parcel. During the redemption period under *Section 131c*, the MDNR is required to inspect each parcel of land to determine whether or not the land is occupied. *Mich. Comp. Laws § 211.131c(5).* If the land appears to be occupied, the MDNR must serve notice of the right of redemption upon the occupants or, if unable to serve the notice personally, post the property. *Id.*

n5 If the tax lien is purchased by a private purchaser at the tax sale and is not redeemed by the first Tuesday in May of the following year, the tax lien purchaser is entitled to a tax deed from the state treasurer. *Mich. Comp. Laws § 211.72.* After the tax deed is issued to a private purchaser, the prior owners have a second and final redemption period pursuant to Section 140 of the Act, *Mich. Comp. Laws § 211.140.* Section 140 requires the tax deed holder to serve notice of a right of redemption on occupants and record interestholders. Parties entitled to notice have six months after service of the *Section 140* notice in which to redeem the property by payment of the judgment amount which the tax deed holder paid at the tax sale, plus fifty percent of the judgment amount, plus service fees for service of the notices. The *Section 140* notice provisions apply only to property deeded by the State Treasurer to a tax lien purchaser. They do not apply to lands purchased from the MDNR pursuant to *Mich. Comp. Laws § 211.131. Flint v. Takacs, 181 Mich. App. 732, 449 N.W.2d 699, 701 (Mich. Ct. App. 1989).*

[17]**

One final right of redemption after expiration of the *Section 131c* redemption period arises under Section 131e of the GPTA. *Mich. Comp. Laws § 211.131e.* Section 131e provides that a right of redemption "shall be extended" until the owners of a recorded property interest in the property have been notified of a hearing before the Treasury Department. The hearing provides the owners an opportunity to show cause why the tax sale and deed to the state should be canceled for any of the reasons set forth in Section 98 of the Act, *Mich. Comp. Laws § 211.98.* n6

n6 The reasons are: 1) the property was exempt from taxation; 2) the taxes had been paid; 3) the sale was in contravention of the GPTA; 4) a certificate, tax history, or statement had been issued by an appropriate officer showing the taxes had been paid; and 5) the description of the land used in the assessment was so indefinite or erroneous as to result in the tax lien being void.

Section 131e allows redemption up to 30 days following the hearing before the **[**18]** Treasury Department. Redemption requires payment of the amounts set out above for redemption under *Section 131c*, plus an additional amount of 50 percent of the taxes for which the property was offered at the tax sale. As first adopted

in 1976, *Section 131e* required notice to be sent to "owners of significant property interest" for those lands "which have a state equalized value of $ 1,000 or more." Amended by 1996 Mich. Pub. Acts 476, effective December 26, 1996, *Section 131e* now requires notice to "the owners of a recorded property interest in the property ...."

5. Disposal of Surplus Lands by the MDNR

The MDNR reviews those lands deeded to it by the State Treasurer to determine lands suitable for use by the Department. *Mich. Comp. Laws § 211.131(1)*. Lands not suitable for MDNR use may be transferred to other governmental entities, churches, or public educational institutions for public uses. *Mich. Comp. Laws § 324.2101*. n7

n7 Lands not withheld from sale by the MDNR or deeded for public purposes may be offered by the MDNR at public auction at a minimum bid established by the MDNR director. *Mich. Comp. Laws § 211.131(1)*. Sale proceeds, after deducting costs incurred by the MDNR, are accounted back to the taxing authorities pro rata according to their interests in the land arising from the nonpayment of taxes and special assessments.

[19]**

D. Notice

There are two underlying issues concerning notice in this case. The first is **[*98]** whether notice to the plaintiffs was required, and if required, when the notice should have taken place. The second is whether notice reasonably calculated to reach plaintiffs is sufficient, or whether actual notice is required.

1. Notice to the Plaintiffs was Statutorily Required under GPTA § 211.131e.

Plaintiffs argue that they were first entitled to notice of the delinquent taxes under *Sections 211.57(2) and 211.57(3)*. Plaintiffs are correct that notice should have been sent out at these times, but they are incorrect to assert that they should have received the notice. As defendants point out, notice was only required under these sections to be sent to the person against whom the taxes were assessed. The plaintiffs have not introduced any evidence that they were the persons against whom the tax was assessed, and the Land Contract specifically provides that the seller was the party responsible for paying taxes, thus implying that the seller would be the person against whom the taxes would be assessed. The plaintiffs therefore were not entitled to notice under *Sections 211.57(2)* **[**20]** *or 211.57(3)*.

Plaintiffs also argue that they were entitled to notice under *Section 211.61a* of the impending tax sale, and under *Section 211.73c* of the post-sale redemption provided for in *Section 211.74*. *Sections 61a and 73c* provide that notice be sent to persons whose names appear in the County Treasurer's records, and to "occupant" for all parcels for which a street address is known. Plaintiffs have introduced no evidence that their names appeared in the County Treasurer's records, and these records would presumably only contain the names of those against whom the tax is assessed. Therefore, plaintiffs were not entitled to notice under *Sections 61a and 73c* as persons whose names appeared in the County Treasurer's records. Plaintiffs also contend that they were entitled to receive notice as the "occupant" of Lot 15. n8 *Sections 61a(5) and 73c(6)*, however, both explicitly state that a failure to receive or serve notice does not invalidate the proceedings taken under those sections. Plaintiffs' arguments with respect to *Sections 61a and 73c* are unavailing.

n8 Lot 15 did not have an individual street address, and was conceded by the plaintiffs to be a vacant lot. Nevertheless, it is uncontested that Lots 13, 14, and 15 were collectively known as "234 Alfred," so it is at least arguable that notice should have been sent to that address.

[21]**

Plaintiffs further argue that they were entitled to notice under *Section 211.131c*. *Section 131c* requires the MDNR to perform an inspection of the land to determine if the land is occupied. If the land appears to be occupied, the MDNR must serve personal notice upon the occupants, or if unable to serve personal notice, to post the property. The MDNR, was not, however, under any obligation to serve personal notice on the occupants, as plaintiffs have conceded that Lot 15 was a vacant lot. *Section 131c* is not clear as to whether the MDNR must post the property if the land appears to be unoccupied. However, we do not need to decide this issue because of the notice requirements of *Section 131e*, discussed next.

Finally, plaintiffs contend that they were entitled to notice under *Section 211.131e* of the GPTA. *Section 131e(1)* provides that notice of a show cause hearing on the property must be sent to "owners of a significant property interest." n9 It is clear from the record that plaintiff Sally Sneed, now Sally Howard, had recorded her property interest in Lot 15, and therefore **[*99]** was entitled to notice at this time. There is no argument by the defendants that Sally Howard's interest was not

[22]** "significant," nor that she had not provided an address with the county register of deeds. Plaintiff Sally Howard was entitled to notice under *Section 131e(1) of the GPTA*.

> n9 *Section 131e* now provides that notice must be sent to "owners of a *recorded* property interest," so "significant" and "recorded" may be synonymous.

2. Actual Notice v. Notice Reasonably Calculated to Apprise the Plaintiffs of Their Rights

The second underlying question is whether Sally Howard was entitled to actual notice or whether notice was sufficient if reasonably calculated to reach her, Plaintiffs contend that she was entitled to actual notice of the show cause hearing under *Section 211.131e*, and advance two arguments in favor of this proposition. First, they argue that the plain language of *Section 131e* requires actual notice. *Section 131e(1)*, prior to the 1996 amendment, provided that

> the redemption period on those lands deeded to the state pursuant to *section 67a* that have a state equalized valuation of $ 1.000,00 **[**23]** or more shall be extended until owners of a significant property interest in the lands have been notified of a hearing before the department of treasury. Proof of notice to those persons and notice of hearing shall be recorded with the register of deeds in the county in which the property is located.

Mich. Comp. Laws § 211.131e(1). The plaintiffs cite several cases in support of their interpretation of this statutory provision: *United States v. Varani, 780 F.2d 1296, 1304 (6th Cir. 1986)*; *Takacs, 449 N.W.2d at 702*; *Brandon Township v. Tomkow, 211 Mich. App. 275, 535 N.W.2d 268, 272 (Mich. Ct. App. 1995)*; *Standard Federal Savings Bank v. Genesee County, 208 Mich. App. 569, 528 N.W.2d 793 (Mich. Ct. App. 1995)*. The difficulty with this argument is that the Michigan Supreme Court, in a recently decided case discussing the precise issue of notice under *Section 131e*, held that notice reasonably calculated to apprise the plaintiffs of their rights was constitutionally sufficient, even when actual notice had not occurred. *Smith v. Cliffs on the Bay Condo. Ass'n., 463 Mich. 420, 617 N.W.2d 536, 540-41 (Mich. 2000)*. In reaching this conclusion, the court **[**24]** implicitly decided that actual notice is not necessary under *Section 131e*. Plaintiffs argument based on the plain language of the text must therefore fail.

Second, the plaintiffs assert that the Michigan Supreme Court's decision in *Dow v. Michigan, 240 N.W.2d 450 (Mich. 1976)*, requires that they receive actual notice of the show cause hearing. In *Dow*, the Michigan Supreme Court ruled that the old statutory procedure for notification of individuals in tax foreclosure proceedings was constitutionally insufficient. *Id. at 460*. The old statutory procedure had provided for notice by publication and notice by mail. *Id. at 457*. The defendants could only prove that notification by publication had taken place, but there was no record of notice by mail. *Id.* The *Dow* court ruled that notice by publication alone was constitutionally insufficient, but that notice by mail was adequate if it was "directed to an address reasonably calculated to reach the person entitled to the notice." *Id. at 459*. The court went on to say: "if the state exerts reasonable efforts, then failure to effectuate actual notice would not preclude **[**25]** foreclosure of the statutory lien and indefeasible vesting of title on expiration of the redemption period." *Id.*

Plaintiffs argue that the efforts undertaken by the state were not reasonable efforts to notify them of the hearing, and that in the absence of reasonable efforts actual notice is required. This argument has some force. The only evidence that the defendants made an attempt to notify the plaintiffs about the hearing is the letter **[*100]** sent to a "Sally Snead" at 8711 Intervale, return receipt requested. This is not an accurate spelling of plaintiff Sally Sneed's last name (now Sally Howard), nor is it the address that was recorded with her deed. Additionally, when the receipt was returned to the defendants it was signed "Sallie Snead." thus containing differences from both the first and the last names of the plaintiff. There is therefore some weight to plaintiffs' assertion that sending a letter to a person with a misspelled name at the wrong address does not amount to efforts "reasonably calculated" to reach that person.

Since the *Dow* decision, however, the Michigan Supreme Court has further addressed the issue of notice in tax foreclosure proceedings in *Cliffs on the Bay, 463 Mich. 420, 617 N.W.2d 536.* **[**26]** In *Cliffs on the Bay,* the Michigan Supreme Court upheld the statutory procedure provided for in the GPTA as constitutionally sufficient and ruled that it comported with the requirements set forth in *Dow Id. at 541. Cliffs on the Bay,* concerned a situation in which the state mailed a notice to the plaintiffs' last listed address in the record of deeds, but that notice was returned as undeliverable. The *Cliffs on the Bay* court ruled that the defendants had complied with the statutory procedure and that the procedure was con-

stitutionally adequate, and that the defendants were therefore not under any obligation to make further efforts to effectuate notice. n10 *Id. at 542.*

> n10 This was true even though it would have been easy for the defendants to ascertain the plaintiff's new address because it would have been listed with the Corporation and Securities Bureau. *Id. at 426, 430-31.*

Under the holding of *Cliffs on the Bay,* therefore, the defendants must show that **[**27]** they complied with the statutory notice procedures. There is evidence that the defendants complied to the procedure to a certain degree--they sent out a letter giving notice--but it is more questionable whether they fully complied with the statutory procedure, as it does not appear, based on the limited evidence that is available, that they sent the notice to a person or address recorded with the register of deeds. Nevertheless, there is at least some evidence that defendants attempted to comply with the statutory notice requirements.

The defendants are at a distinct disadvantage in proving that they complied with the statutory procedure because of the passage of time. Any proof that the defendants might have of reasonable efforts has been destroyed because of the regular disposal of records after a given period of time. Without these records, the defendants cannot prove that the efforts they made were reasonable, and the only evidence that remains is inconclusive in that it shows that efforts were made, but these might have been unreasonable if sent to the wrong address.

Statutes of limitations were instituted for the very purpose of protecting against these types of concerns. **[**28]** *See Chase Sec. Corp. v. Donaldson, 325 U.S. 304, 314, 89 L. Ed. 1628, 65 S. Ct. 1137 (1945)* ("Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients. rather than principles. They are practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost."); *Order of R.R. Telegraphers v. Railway Express Agency, 321 U.S. 342, 348-49, 88 L. Ed. 788, 64 S. Ct. 582 (1944)* ("Statutes of limitation, like the equitable doctrine of laches, in their conclusive effects are designed **[*101]** to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared."). This case, because of the many years that have passed since the relevant events took place, presents a paradigm example of the importance and necessity of statutes of limitations in our judicial system.

E. The Applicable Statute of Limitations

The district court found that the statute of limitations most appropriate for this case **[**29]** was that found in *Mich. Comp. Laws § 211.431*, which provides:

> After the expiration of six months from and after the time when any deed made to the state ... shall have been recorded in the office of the register of deeds for the county in which the land so deeded shall be situated, the title of the state in and to the same shall be deemed to be absolute and complete, and no suit or proceeding shall thereafter be instituted by any person claiming through the original or government title to set aside, vacate or annul the said deed or the title derived thereunder.

Mich. Comp. Laws § 211.431. The district court also held that the statute was tolled until the final redemption period under *Section 131e* had run. The statute of limitations for this action, according to the district court, therefore expired sometime in 1985.

Although by its terms *§ 431* would appear to apply, we note that the Michigan Supreme Court did not rely upon it when there was a question as to the constitutional sufficiency of the notice in cases substantially similar to the present appeal. In *Dow,* the court stated in a footnote that the defendant could not rely on *Section 431* "to insulate itself **[**30]** from redress if the statutory procedure for tax sales did not meet constitutional requirements." *240 N.W.2d at 452 n.9.* Perhaps more importantly, the *Cliffs on the Bay* court would not have had to reach the question of whether the notice involved was constitutionally sufficient if *§ 431* barred the action. n11 Given the Michigan Supreme Court's hesitancy to apply *§ 431* when constitutional issues similar to those in this appeal were involved, we are likewise not inclined to do so.

> n11 The *Cliffs on the Bay* court originally remanded the case to the trial court for consideration in light of *Section 431* and Footnote 9 of *Dow. 589 N.W.2d 779 (Mich. 1998).* On reconsideration of the remand order, the court vacated the remand. *460 Mich. 867, 599 N.W.2d 101 (Mich. 1999).*

Nevertheless, there is another statute of limitations that requires the dismissal of this case. The latest date upon which this cause of action could have accrued is November 29, 1984, when the State recorded its deed **[**31]** to Lot 15. This is so because upon the recording of the deed the plaintiffs clearly had the right to bring whatever claims they had to the land. Moreover, the recording of the deed is the time when the plaintiffs are put on constructive notice of a contrary claim to the land. Using actual notice as the time of accrual, in contrast, would undermine the purpose of the statute of limitations. n12 **[*102]** The recording of the deed is also the date of accrual under *§ 431*, further confirming that the plaintiffs' claims accrue as of that date.

> lands or make any entry upon any lands unless, after the claim or right to make the entry first accrued to himself or to someone through whom he claims, he commences the action or makes the entry within the periods of time prescribed by this section.
>
> (2) When the defendant claims title under some deed made by an officer of this state or of the United States who is authorized to make deeds upon the sale of lands for taxes assessed and levied within this state the period of limitation is 10 years.

> n12 The purpose of a recording system is to provide notice of one's interest in a parcel of land. *See Cheatham v. Carter County, 363 F.2d 582, 585 (6th Cir. 1966)* ("The purpose of recording and registering deeds is to give the world constructive notice of transfers."). If the plaintiffs had performed a title search prior to accepting the warranty deed from the seller in 1989, they would have known then--before accepting title--that the State had an interest in the land.
>
> Furthermore, the plaintiffs should have known that something was amiss with Lot 15 when they did not receive a tax bill on the land. Under Michigan law, an owner of land is on notice that a tax will be imposed each year, and the owner fails to pay the tax at his own risk. *See Fisher v. Muller, 53 Mich. App. 110, 218 N.W.2d 821, 830 (Mich. Ct. App. 1974)* ("every owner of land is chargeable with notice that a tax will be levied on the land each year. This ... does not mean that a landowner must annually report to the local tax assessing authorities to discover his assessment, but rather that after reasonable notice is made or at least attempted to be made and the taxpayer still neglects or refuses to pay his property taxes, the risk of incurring a state lien on his land and possible tax sale thereof is his to bear.").

[32]**

Therefore, to the extent that plaintiffs are asserting a right to title in the land, this claim is barred by the statute of limitations found in *Mich. Comp. Laws § 600.5801*, which provides in pertinent part that:

Since plaintiffs did not bring this action until February 22, 2001, more than 16 years after the recording of the State's deed and 6 years after the statute of limitations ran on November 29, 1994. their claims to title in the land were properly dismissed.

To the extent that plaintiffs are asserting claims under *42 U.S.C. § 1983* for violation of their personal **[**33]** constitutional rights, these claims are also barred. n13 The statute of limitations applicable to these claims is found in *Mich. Comp. Laws § 600.5805(10)*, which provides that "the period of limitations is 3 years after the time of ... injury for all other actions to recover damages for ... injury to a person or property." *See Carroll v. Wilkerson, 782 F.2d 44, 45 (6th Cir. 1986)*. Any due process violation that might have occurred in this case took place much more than 3 years before plaintiffs filed this action on February 22, 2001.

> n13 To the extent that the plaintiffs seek monetary damages under *§ 1983* from the State of Michigan, this claim fails because "a State is not a 'person' against whom a *§ 1983* claim for money damages might be asserted." *Lapides v. Bd. of Regents, 535 U.S. 613, 617, 152 L. Ed. 2d 806, 122 S. Ct. 1640 (2002)*.

III. CONCLUSION

For the foregoing reasons, **[**34]** we AFFIRM the judgment of the district court dismissing plaintiffs' claims against all defendants.

CONCURBY: MOORE, Circuit Judge. Concurs in result only.

EXHIBIT K

LEXSEE 2005 MICH. APP. LEXIS 1653

BUILDERS UNLIMITED, INC., Plaintiff-Appellee, v DONALD OPPENHUIZEN, Defendant-Appellant.

No. 254789

COURT OF APPEALS OF MICHIGAN

2005 Mich. App. LEXIS 1653

June 12, 2005, Decided

NOTICE: [*1] THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

PRIOR HISTORY: Kent Circuit Court. LC No. 03-009124-CH.

DISPOSITION: Affirmed.

JUDGES: Before: Murphy, P.J., and Sawyer and Donofrio, JJ.

OPINION: PER CURIAM.

Defendant appeals as of right the order granting partial summary disposition in favor of plaintiff pursuant to *MCR 2.116(C)(9)* and (10). n1 This quiet-title action arose from the

> n1 There were a number of defendants named in this quiet-title action as persons or entities that might hold or own an interest in the property. This appeal only involves defendant Oppenhuizen (hereinafter "defendant" in the singular) as the other defendants were defaulted. Because multiple defendants were made parties to this suit, plaintiff's motion relative to defendant was only for partial summary disposition. Eventually, the entire suit was concluded pursuant to an order granting final judgment based on the defaults.

[*2] forfeiture, foreclosure, and sale of property initiated by Kent County for failure to pay delinquent property taxes. The parcel at issue is located on Lafayette Street in Grand Rapids. On appeal, defendant argues that because his predecessors in interest to the property never received notice of the foreclosure as required by *MCL 211.78i* of the General Property Tax Act (GPTA), *MCL 211.1 et seq.*, the foreclosure and subsequent sale to plaintiff were invalid and defendant's property interest remains. We disagree and affirm.

On April 5, 2001, Kent County recorded a certificate of forfeiture of real property, which indicated that on March 1, 2001, the Lafayette parcel was forfeited to the county for nonpayment of taxes for the years 1997 and 1999. On April 25, 2002, a notice of judgment of foreclosure was recorded, which indicated that a judgment of foreclosure had been entered by the circuit court on March 1, 2002, and that the judgment became "final and unappealable 21 days after its entry." Defendant purportedly acquired his interest in the property pursuant to a quitclaim deed executed on August 30, 2002, by one Jacqueline Bell, [*3] a petitioner in the estate of M. Ruth Exo and the estate of Robert Moulenbelt, which estates allegedly owned interests in the property. n2 Plaintiff then purchased the property in September 2002 from Kent County for $ 17,000 at auction pursuant to a quitclaim deed.

> n2 Defendant asserts that Exo owned the property pursuant to a 1952 deed, that she died in 1985, which resulted in her only son Moulenbelt obtaining an interest, and that Moulenbelt died in 1992. Defendant further asserts that Bell is Moulenbelt's daughter and that Bell, as petitioner, commenced probate proceedings in August 2002 as to the estates of both Exo and Moulenbelt. With respect to Exo's estate, a petition and order for assignment lists and describes the property at issue and assigns 100 of it to Moulenbelt. In regard to Moulenbelt's estate, a petition and order for assignment lists and describes the property and assigns it to Bell in the amount of $ 5,000 (asset given a value of $ 5,000 in petition) for fu-

neral and burial expenses that she paid on Moulenbelt's death.

[*4]

Plaintiff filed its action to quiet title, naming defendant as an individual who may claim an interest in the property based upon a quitclaim deed on record at the register of deeds. In its complaint, plaintiff alleged that it is entitled to a fee simple interest in the property as against all others pursuant to the final judgment of foreclosure and *MCL 211.78k*, where it purchased a vested fee simple interest from Kent County.

Plaintiff moved for partial summary disposition, arguing that defendant was statutorily precluded under *MCL 211.78l(1)* from claiming any possessory interest based on a lack of notice under the GPTA. In response, defendant argued that he still had an interest in the property because Bell transferred a legitimate interest to him pursuant to the quitclaim deed and the estates and heirs never received notice as to the foreclosure as required by *MCL 211.78i*, which provides a notice requirement for those parties holding a property interest. Defendant, however, admitted that he acquired his interest in August 2002 through probate court proceedings, which was after the judgment of foreclosure **[*5]** was entered and the 21-day redemption period lapsed.

In granting plaintiff's motion for summary disposition, the trial court held that defendant was precluded from challenging plaintiff's ownership interest in its quiet-title action on the basis of lack of notice because, following a final judgment of foreclosure, the only remedy under the GPTA is an action for monetary damages in the court of claims.

The trial court granted plaintiff's motion for partial summary disposition pursuant to *MCR 2.116(C)(9)* and (10). On appeal, a trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank, 468 Mich. 557, 561; 664 N.W.2d 151 (2003).* Under *MCR 2.116(C)(10)*, this Court must review the record in the same manner as the trial court to determine whether any genuine issue of material fact exists and whether the movant is entitled to judgment as a matter of law. *Morales v Auto-Owners Ins Co, 458 Mich. 288, 294; 582 N.W.2d 776 (1998).* The documentary evidence is viewed in a light most favorable to the party opposing the motion. *Id. MCR 2.116(C)(9)* **[*6]** provides for summary disposition where the opposing party fails to state a valid defense to the claim asserted. Summary disposition is proper under *MCR 2.116(C)(9)* if the defenses are so clearly untenable as a matter of law that no factual development could possibly deny the plaintiff's right to recovery. *Allstate Ins Co v JJM, 254 Mich. App. 418, 421; 657 N.W.2d 181 (2002).*

Defendant first argues that he has a viable legal interest in the property at issue because his predecessors in interest were not sent a notice of the foreclosure pursuant to *MCL 211.78i*. We disagree.

At the time of this foreclosure in 2002, *MCL 211.78k* provided, in pertinent part:

> (5)(b) [The circuit court judgment shall specify that] fee simple title to property foreclosed by the judgment will vest absolutely in the foreclosing governmental unit, except as otherwise provided in subdivisions (c) and (e)[not applicable here], without any further rights of redemption, if all forfeited delinquent taxes, interest, penalties, and fees are not paid within 21 days after entry of the judgment.
>
> * * * **[*7]**
>
> (6) Fee simple title to property set forth in a petition for foreclosure filed under section 78h on which forfeited delinquent taxes, interest, penalties, and fees are not paid within 21 days after the entry of judgment shall vest absolutely in the foreclosing governmental unit, and the foreclosing governmental unit shall have absolute title to the property. The foreclosing governmental unit's title is not subject to any recorded or unrecorded lien and shall not be stayed or held invalid except as provided in subsection (7)[addresses appeals to this Court after the judgment is entered]. n3

n3 Pursuant to *2003 PA 263,* fee simple title now vests absolutely in the foreclosing governmental unit "on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section." *MCL 211.78k(5)(b).*

Plaintiff's position is **[*8]** that because absolute title vested with Kent County and Kent County sold the property to plaintiff at auction, defendant's only remedy in this case is monetary damages. *MCL 211.78l* provides, in relevant part:

> (1) If a judgment for foreclosure is entered under section 78k and all existing

> recorded and unrecorded interests in a parcel of property are extinguished as provided in section 78k, the owner of any extinguished recorded or unrecorded interest in that property who claims that he or she did not receive any notice required under this act shall not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover monetary damages as provided in this section.
>
> (2) The court of claims has original and exclusive jurisdiction in any action to recover monetary damages under this section.

Therefore, we agree with plaintiff's position and find that because *MCL 211.78k* provides that all redemption rights are excluded after 21 days of the final judgment of foreclosure, and defendant, or his predecessors in interest, failed to file an appeal to this judgment, the trial court correctly **[*9]** ruled in favor of plaintiff. While *MCL 211.78k*, standing alone, may leave one questioning whether absolute title vests with a governmental unit where required notice was not provided, n4 *MCL 211.78l(1)* clearly and unambiguously contemplates situations where no notice was given, yet it does not result in the divestiture of fee simple title in the foreclosing governmental unit as created by § 78k, but leaves open only a claim for monetary damages. The Legislature evidently chose to keep chains of title clear and property interests unencumbered in case of notice failures, but still provide an unnoticed interest holder refuge in a monetary action for damages.

> n4 As argued by defendant, we point to *MCL 211.78k(5)(f)*, which, in 2002, provided that a foreclosure judgment shall include "[a] finding that all persons entitled to notice and an opportunity to be heard have been provided that notice and opportunity." However, this provision does not support the proposition that the judgment as to title is invalid if the finding is ultimately deemed incorrect, especially in light of the language in *MCL 211.78l.*

[*10]

Defendant argues that the court of claims only has jurisdiction over actions against the state and cannot address the constitutional arguments, n5 and defendant questions who he would sue in the court of claims. While it might appear that defendant could sue Kent County, the entity responsible for providing notice, pursuant to the jurisdictional provisions of *MCL 211.78l(2)* granting authority to the court of claims, we decline to take a position on the matter as the issues are properly left to the court of claims for resolution should defendant seek to pursue a case in that forum. We do note that *MCL 211.78l(1)* speaks of an "owner" of an "interest" who claims lack of notice filing suit for monetary damages, yet defendant did not own an interest in the property at the time notice was required, calling into doubt defendant's standing in such an action. For purposes here, we further note that *MCL 211.78i(2)* requires the foreclosing governmental unit to apprise "owners of a property interest" of the foreclosure proceedings through proper notice. As this Court noted in *In re AMB, 248 Mich. App. 144, 176;* **[*11]** *640 N.W.2d 262 (2001),* "it is well settled that the right to notice is personal and cannot be challenged by anyone other than the person entitled to notice." Defendant had no right to notice.

> n5 We address defendant's constitutional arguments below.

The GPTA simply does not permit defendant to pursue an ownership claim or defense under the circumstances presented. Defendant's assertion that he is solely and properly raising a sound constitutional argument as a defense to a declaratory action seeking to quiet title lacks merit because he has no standing to assert any due process violations possibly suffered by the estates and heirs, *AMB, supra at 173-176,* because defendant does not claim that plaintiff violated constitutional protections, as opposed to Kent County, a nonparty, *Crawford v Dep't of Civil Service, 466 Mich. 250, 258; 645 N.W.2d 6 (2002),* and because the constitutional argument is not adequately set forth, *Mudge v Macomb Co, 458 Mich. 87, 105;* **[*12]** *580 N.W.2d 845 (1998).*

We have examined all of defendant's remaining arguments and conclude that there exists no basis for reversal.

Affirmed.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Pat M. Donofrio